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Washington, Tuesday, August 27, 1940

The President

EXECUTIVE ORDER

REGULATIONS GOVERNING THE PAYMENT OF ADDITIONAL COMPENSATION TO ENLISTED MEN OF THE COAST GUARD SPECIALLY QUALIFIED IN THE USE OF ARMS

By virtue of and pursuant to the authority vested in me by section 18 of the Act entitled "An Act To readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service", approved June 10, 1922, 42 Stat. 632, it is hereby ordered that enlisted men of the Coast Guard who have established their special qualifications in the use of the arm or arms which they may be required to use according to standards of efficiency that may be prescribed from time to time by the Secretary of the Treasury, and who are so stationed by their commanding officers that they may be required to use such arm or arms, including periods while transferred for temporary duty away from the unit to which permanently attached (provided the commanding officer of the unit to which they are permanently attached has retained them in the stations where they normally use such arm or arms), shall receive additional compensation, for such periods of time as may be prescribed by the Secretary of the Treasury, as follows:

First Class	$5.00 per month
Second Class	$4.00 per month
Third Class	$3.00 per month
Fourth Class	$2.00 per month
Fifth Class	$1.00 per month

Executive Order No. 3724, of August 17, 1922, prescribing regulations governing the payment of additional compensation to enlisted men of the Coast Guard specially qualified in the use of arms, is hereby superseded.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
August 22, 1940.

[No. 8523]

[F. R. Doc. 40-3547; Filed, August 23, 1940; 3:04 p. m.]

Rules, Regulations, Orders

TITLE 8—ALIENS AND CITIZENSHIP

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE

[General Order No. C-22]

REGULATIONS GOVERNING THE REGISTRATION AND FINGER-PRINTING OF ALIEN SEAMEN IN ACCORDANCE WITH THE ALIEN REGISTRATION ACT, 1940

AUGUST 23, 1940.

Pursuant to the authority contained in sections 37 (a), 34 (a), and 32 (c) of Title III of the "Alien Registration Act, 1940" (Public, No. 670, 76th Congress, approved June 28, 1940), the following regulations are hereby prescribed in aid of the administration and enforcement of said Title III, and are published as an addition to Part 29,[1] Title 8, Code of Federal Regulations:

§ 29.8 *Registration and fingerprinting of alien seamen.* (a) Every alien seaman, as that term is defined in § 7.1 of this title, who shall enter the United States (including Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States) on or after August 27, 1940, and who does not present a receipt of registration issued within one year of such time of entry showing that he has been registered and fingerprinted in accordance with the provisions of the Alien Registration Act, 1940, shall be registered and fingerprinted by the immigrant inspector who gives him the regular inspection provided for in § 7.17 of this title.

(b) Any immigrant inspector, or any other person hereafter designated by the Commissioner of Immigration and Naturalization, shall be a registration officer authorized to register and fingerprint alien seamen in accordance with the provisions of this section.

(c) Registration shall be made by each alien seaman required to register, upon Form AR-102 (the primary registration form) and Form AR-103 (the attached receipt) and, in appropriate cases, on

[1] 5 F.R. 2836.

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FEDERAL REGISTER

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Form AR–2a (for supplemental information, to be made a part of Form AR–102) and Form AR–4 (the fingerprint form); and the registration shall in all respects conform to these forms.

(d) Alien seamen who are registered in accordance with the provisions of this section shall furnish the information required in paragraph (1) of § 29.4 of this part, except that the requirements of the first, second, seventh, and fifteenth sub-paragraphs shall be modified as follows:

(1) The alien shall give in full his present legal name. The alien shall list all the names by which the alien has ever been known, either in the United States or outside, including the maiden name of a married woman, the original name or names of an adopted child, business or professional name, aliases and nicknames. All names given by the alien shall be in the English alphabet.

(2) If the alien is discharged to reship foreign, he shall state where his address in the United States will be.

(7) The alien shall state the date of his first arrival in the United States. A first arrival shall be defined as the earliest arrival following which the alien remained for six months or longer.

(15) The alien shall state whether, during the past five years, he has been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering in the United States the political activities, public relations, or public policy of a foreign government. If the alien has been affiliated with or active in any such groups or organizations, he shall list them. If he holds an office or official position in any such group or organization, he shall so state. The registration officer shall not undertake to enumerate or define any such groups or organizations.

(e) The registration forms and fingerprints of alien seamen who are registered and fingerprinted in accordance with provisions of this section shall be sent promptly by registration officers, through the appropriate district director, to the Immigration and Naturalization Service at Washington, D. C.

(f) The receipts of registration issued to alien seamen who are registered and fingerprinted in accordance with provisions of this section shall be valid for a period of one year from date of issuance. Such receipts shall be delivered to the seaman at the time of registration. Whenever any alien seaman possesses a receipt of registration which is no longer valid, he shall, when he next registers and is fingerprinted, deliver it to the registration officer.

(g) Save as expressly provided in this section, the registration of alien seamen shall conform in all respects to the provisions of Sections 29.1 to 29.7, inclusive, of this title. (Secs. 37 (a), 34 (a) and 32 (c), Act of June 28, 1940; Public, No. 670, 76th Congress.)

EDW. J. SHAUGHNESSY,
Acting Commissioner of Immigration and Naturalization.

Approved:

LEMUEL B. SCHOFIELD,
Special Assistant to the Attorney General in charge of the Immigration and Naturalization Service.

Approved:

ROBERT H. JACKSON,
Attorney General.

[F. R. Doc. 40–3548; Filed, August 23, 1940; 3:17 p. m.]

TITLE 10—ARMY: WAR DEPARTMENT

CHAPTER VII—PERSONNEL

PART 78—DECORATIONS, MEDALS, RIBBONS AND SIMILAR DEVICES [1]

PURPOSE OF AND SUPPLY OF SERVICE RIBBONS, BRONZE STARS, MINIATURES, AND LAPEL BUTTONS

§ 78.51 *Service ribbons*—(a) *General.* Service ribbons are authorized for wear to indicate possession of War and Navy Department decorations and service medals, and Treasury life-saving medals.

(b) *How furnished.* (1) Each decoration or service medal shipped is accompanied by a ribbon-covered bar. Persons in the military service will be furnished two extra sections of ribbon for the bar.

[1] Sections 78.51 to 78.58 are added.

(2) When the originals of service ribbons furnished by the War Department have been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the recipients, duplicates thereof will be furnished gratuitously to persons in the military service. Replacement by persons no longer in the military service will be made at their own expense. See AR 600–90 and §§ 7.1 to 7.10, inclusive.

(3) Extra bars and ribbons are sold to others than enlisted men, to whom the corresponding decorations or medals have been awarded. (45 Stat. 500; 10 U.S.C. 1415a, 1415b) [Par. 1, AR 600–85, July 26, 1940]

§ 78.52 *Bronze stars*—(a) *General.* Bronze stars are authorized for wear on the Victory medal service ribbon to indicate possession of battle clasps, one bronze star for each such clasp. No device has been authorized to indicate possession of service clasps.

(b) *How furnished.* Bronze stars will be furnished gratuitously with the Victory medal to persons to whom battle clasps have been awarded. (45 Stat. 500; 10 U.S.C. 1415a, 1415b) [Par. 2, AR 600–85, July 26, 1940]

§ 78.53 *Miniatures*—(a) *General.* Miniature replicas of War Department decorations, service medals and service ribbons are authorized for wear to indicate possession of the corresponding decorations and service medals.

(b) *How furnished.* Miniatures are not furnished by the War Department, either by issue or sale, except that each Oak-Leaf Cluster is accompanied by a miniature thereof. (45 Stat. 500; 10 U.S.C. 1415 a, 1415 b) [Par. 3, AR 600–85, July 26, 1940]

§ 78.54 *Lapel buttons.* Lapel buttons are authorized for wear—

(a) To denote possession of War Department decorations and of service medals, one for each such decoration or medal.

(b) To indicate military service rendered (known as the "badge for service," see paragraph 50*b* (4) (*f*), AR 600–40 [2]).

(c) To denote membership in the Officers' Reserve Corps or in the Enlisted Reserve Corps.

(d) In lieu of certain badges referred to in paragraph 50*b* (4) (*a*), AR 600–40. (45 Stat. 500; 10 U.S.C. 1415a, 1415b) [Par. 4, AR 600–85, July 26, 1940]

§ 78.55 *Lapel buttons other than Victory button.* One lapel button pertaining to each of the several decorations other than the Oak-Leaf Cluster, the citation star, and the fourragere, and to each of the various service medals, except the Victory button, is furnished gratuitously. (45 Stat. 500; 10 U.S.C. 1415a, 1415b) [Par. 5, AR 600–85, July 26, 1940]

§ 78.56 *Victory button*—(a) *General.* The Victory button will be issued gratuitously to any person who served on active duty in the Army at any time between April 6, 1917, and November 11, 1918, or as a member of the American Expeditionary Forces in Siberia or European Russia after having entered the service subsequently to November 11, 1918, in one or more of the capacities enumerated in paragraph 3*a*, AR 600–65, and whose service was honorable as defined in paragraph 4*b*, AR 600–65, except that it will not be issued posthumously, nor will it be issued to any person who rendered service as specified in paragraph 3*b*, AR 600–65. Silver buttons will be issued in accordance with the provisions of (b) below to those who were wounded in action; bronze buttons to others. Except as otherwise prescribed in § 78.57, one button only will be issued to any one person.

(b) *Silver button.* Silver Victory buttons will be issued only by the Philadelphia Quartermaster Depot on authority of The Adjutant General. A letter giving all the facts in the case should be forwarded to The Adjutant General by the applicant for corroboration in accordance with the facts as shown by the official records on file in The Adjutant General's Office.

(c) *Bronze button*—(1) *How obtained by persons in the military service.* The bronze Victory button will be furnished by post, camp, station, and other local quartermasters or by the Philadelphia Quartermaster Depot if application is made to The Adjutant General. In order to supply these buttons to persons remaining in the service who are entitled to them and who have not previously received them, organization commanders are authorized to submit requisitions for these buttons in the same manner as requisitions for other articles of clothing and equipage are submitted.

(2) *How obtained by persons out of service.* All requests for bronze Victory buttons by persons no longer in the service will be submitted in letter form to The Adjutant General, Washington, D. C. Original or copies of discharge certificates will not be submitted with such applications.

(d) *Record of issue*—(1) *To enlisted men in service.* The fact of issue and the kind of button issued will be entered in the service record and in the discharge certificate of each enlisted man to whom a Victory button is issued while he is in service.

(2) *To persons not in service.* The Adjutant General will cause a notation to be made in the records of the individual concerned of the fact of issue and the kind of button issued. (45 Stat. 500; 10 U.S.C. 1415a, 1415b) [Par. 6, AR 600–85, July 26, 1940]

§ 78.57 *Duplicates.* (a) Upon presentation of satisfactory evidence that the original has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom originally issued—

(1) Duplicate lapel buttons representing the Distinguished Service Cross, the Distinguished Service Medal, the Silver Star, the Purple Heart, the Soldier's Medal, or the Distinguished Flying Cross and duplicate rosettes for the Medal of Honor will be furnished gratuitously to recipients of those decorations.

(2) Duplicates of miniature Oak-Leaf Clusters will also be furnished gratuitously to recipients of this decoration.

(3) Duplicate lapel buttons repesenting service medals will be furnished gratuitously to persons in the service (who may be entitled thereto) and will be sold at cost price to persons no longer in service.

(b) In any case such duplicates will be furnished by the commanding officer, Philadelphia, Quartermaster Depot, only upon approval by the Secretary of War or certification by The Adjutant General. See also AR 30–3000 [3]. (45 Stat. 500; 10 U.S.C. 1415a, 1415b) [Par. 7, AR 600–85, July 26, 1940]

Cross Reference: For regulations relating to the manufacture and sale of medals, etc., by civilians see 10 CFR Part 7.

§ 78.58 *Placing citation stars and miniature Oak-Leaf Clusters on.* The citation stars and miniature Oak-Leaf Clusters authorized by paragraph 45*d* (1) (*b*) and (*c*), AR 600–35,[4] to be placed on lapel buttons in certain cases will not be placed thereon by the Quartermaster Corps, either before or after issue of the button. (45 Stat. 500; 10 U.S.C. 1415a, 1415b) [Par. 10, AR 600–85, July 26, 1940]

[SEAL] E. S. ADAMS,
Major General,
The Adjutant General.

[F. R. Doc. 40–3558; Filed, August 24, 1940; 1:01 p. m.]

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 3625]

IN THE MATTER OF IMOGENE SHEPHERD, LTD.

§ 3.6 (c) *Advertising falsely or misleadingly—Composition of goods:* § 3.6 (j10) *Advertising falsely or misleadingly—History of product:* § 3.6 (n) (2) *Advertising falsely or misleadingly—Nature—Product:* § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* Disseminating, etc., in connection with offer, etc., of respondent's "Baby Skin Oil" and "Baby Skin Oil Soap", or other similar preparations, any advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, pur-

[3] Administrative regulations of the War Department relative to wearing decorations, service medals, and badges.

[2] Administrative regulations of the War Department relative to clothing and equipage.

[4] Administrative regulations of the War Department relative to lapel buttons.

chase in commerce, etc., of said products, which advertisements represent, directly or by inference, (1) that said preparations are a remedy or an effective treatment for dryness, roughness of the skin, eczema and acne, will prevent and correct skin disfigurements, rejuvenate the texture of the skin or bring back the appearance of youth to the skin of adults, or restore to adults the soft and silken texture of baby skin; or (2) that said products are skin normalizers or make the skin more healthy and restore a distinguishable measure of baby skin blush and freshness to the skin by restoring skin lipids; or (3) that because of modern living habits or conditions, including washing or bathing of the face, indispensable fatty acids are removed from the skin; or (4) that respondent's products contain "Vitamin F"; or (5) that substantial quantities of Vitamin E and the so-called "Vitamin F" can be introduced into and absorbed by the system by means of local application on the skin; or (6) that said products are amazing discoveries, or the outstanding development in beauty culture of the present day; or (7) that said products will nourish, or cause permanent benefit to, the skin on account of their Vitamin E and so-called "Vitamin F" content, or that they will restore essential lipids to the skin; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Imogene Shepherd, Ltd., Docket 3625, August 14, 1940]

ORDER TO CEASE AND DESIST

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 14th day of August, A. D. 1940.

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed by counsel for the Commission and respondent, no request for oral argument having been made, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That respondent Imogene Shepherd, Ltd., its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its products now designated "Baby Skin Oil" and "Baby Skin Oil Soap", or any other preparations composed of substantially the same ingredients, or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from directly or indirectly:

(A) Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent directly or by inference:

(1) That said preparations are a remedy or an effective treatment for dryness, roughness of the skin, eczema and acne; will prevent and correct skin disfigurements; will rejuvenate the texture of the skin or bring back the appearance of youth to the skin of adults, or restore to adults the soft and silken texture of baby skin;

(2) That said products are skin normalizers or that they make the skin more healthy and restore a distinguishable measure of baby skin blush and freshness to the skin by restoring skin lipids;

(3) That because of modern living habits or conditions, including washing or bathing of the face, indispensable fatty acids are removed from the skin;

(4) That its products contain "Vitamin F";

(5) That substantial quantities of Vitamin E and the so-called "Vitamin F" can be introduced into and absorbed by the system by means of local application on the skin;

(6) That its products are amazing discoveries, or the outstanding development in beauty culture of the present day;

(7) That its products will nourish, or cause permanent benefit to, the skin on account of their Vitamin E and so-called "Vitamin F" content; or that they will restore essential lipids to the skin;

(B) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, or any of said products, which advertisements contain any of the representations prohibited in paragraphs (a) (1) to (7), inclusive.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-3555; Filed, August 24, 1940; 11:13 a. m.]

[Docket No. 3821]

IN THE MATTER OF SPRAGUE-KITCHEN & COMPANY

§ 3.6 (n) (2) *Advertising falsely or misleadingly—Nature—Product*: § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product*: § 3.6 (x) *Advertising falsely or misleadingly—Results*: § 3.6 (y) *Advertising falsely or misleadingly—Safety*. Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of "Graolene" or other similar cosmetic preparation, which advertisements represent, directly or by implication, that said preparation is not a dye or is other than a dye, or will cause gray hair to change color without dyeing the hair; or that the use thereof will restore the original or natural color to gray hair, or will supply to the hair shaft the materials in which gray hair is deficient, or will cause the scalp, the hair or the roots of the hair to be normal or healthy; or that it is an effective remedy or cure for dandruff or itching scalp, or will stimulate the growth of hair; or is harmless or that the use thereof will produce no injurious effects; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Modified cease and desist order, Sprague-Kitchen & Company, Docket 3821, August 16, 1940]

IN THE MATTER OF MARY ELOISE GAUSS, AN INDIVIDUAL TRADING AS SPRAGUE-KITCHEN & COMPANY

ORDER STRIKING PORTION OF ORDER TO CEASE AND DESIST

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of August, A. D. 1940.

This matter coming on to be heard by the Commission upon the request of respondent that the order to cease and desist[1] entered herein on August 23, 1939, be modified by striking a certain portion thereof, and it appearing that the modification of said order in the respects requested is in the public interest, and the Commission having duly considered said request and the record herein, and being now fully advised in the premises;

It is ordered, That the order to cease and desist entered herein on August 23, 1939 be modified by striking therefrom the following language appearing in the last four lines thereof:

"or which advertisements fail to reveal that the use of said preparation may produce a harmful or injurious effect particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument."

It is further ordered, That except as herein modified said order to cease and desist remain in full force and effect.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-3556; Filed, August 24, 1940; 11:14 a. m.]

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[1] 4 F.R. 890.

[1] 4 F.R. 3786.

[File No. 21-341]

PART 146—TUNA INDUSTRY

Promulgation of Trade Practice Rules, as Amended

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 19th day of August, A. D. 1940.

Due proceedings having been held under the trade practice conference procedure in pursuance of the Act of Congress approved September 26, 1914, as amended (Federal Trade Commission Act), and other provisions of law administered by the Commission, in the matter of amending the trade practice rules for this industry;

It is now ordered, That the rules of Group I and Group II, as hereinafter set forth, which have been approved and received, respectively, by the Commission and incorporate amendments made, be promulgated as of August 27, 1940.

Statement by the Commission

Trade practice rules for the Tuna Industry are promulgated by the Federal Trade Commission in the amended form hereinafter set forth. The original rules for this industry were issued by the Commission March 22, 1940, and the amendments referred to relate to Rules 1, 7, and 19, which are now promulgated in their revised form, together with the remaining provisions of the March 22d rules which are incorporated without change.

The rules are issued in the interest of protecting industry, trade, and the purchasing public from the harmful effects of unfair trade practices. The provisions as promulgated relate to the sale and distribution of tuna and tuna products by the processors or canners thereof, and by jobbers, distributors, dealers, importers, or other marketers. Such tuna is packed with edible oil and salt, and according to available information the yearly pack has an estimated sales value to the canners of approximately $20,000,000.

The proceedings for the establishment of trade practice rules had been instituted upon application of members of the industry. In the course thereof, the March 22d rules were issued following a trade practice conference held under the auspices of the Commission at Long Beach, California, and subsequent hearings held in Washington, D. C. Thereafter, in respect to amending such rules, public hearings were again held in Washington, and in due course upon consideration of the premises Commission action was taken whereby the amendments above referred to were made and the rules appearing hereinbelow in Group I and Group II were approved and received by the Commission, respectively, and are promulgated as trade practice rules for the Tuna Industry superseding and replacing said rules of March 22, 1940.[1]

[1] 5 F.R. 1122.

THE RULES

These rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of the industry and the public. Their operation is to be directed toward this end and is not to permit of the use of any practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition.

The rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the requirements of the pure food laws or other provision of law.

Group I

Unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission, as construed in the decisions of the Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in or directly affecting interstate commerce.

§ 146.1 *Definitions.* For the purpose of these rules and in their application the following definitions respecting canned tuna and canned tuna products shall apply:

(a) *Fancy Tuna.* (1) The term "Fancy Tuna" as herein used shall be deemed to be the descriptive term for choice cuts of cooked tuna, from fish weighing not more than sixty (60) pounds round weight, packed in cans with large pieces of solid meat and with one or two small pieces of solid meat added, if necessary, to bring the contents up to required net weight, but not including any flakes added at the time of packing.

(2) The term "Fancy White Meat Tuna" as herein used shall be deemed to be the descriptive term for like choice cuts of albacore packed in the same manner.

(3) The expression "choice cuts" means large choice pieces of cooked tuna composed of tender solid meat of selected light color and fine texture, and free from dark meat, bones, skin, extraneous tissue, and any substance or condition impairing quality.

(b) *Standard Tuna.* (1) The term "Standard Tuna" as herein used shall be deemed to be the descriptive term for wholesome cooked tuna meat, not restricted as to size of fish, which when packed contains at least 75% large pieces of solid meat and is free from dark meat, bones, skin, extraneous tissue and debris.

(2) The term "Standard White Meat Tuna" as herein used shall be deemed to be the descriptive term for like large pieces of wholesome solid albacore meat packed in the same manner.

(c) *Tuna Flakes.* (1) The term "Tuna Flakes" or "Flakes" as herein used shall be deemed to be the descriptive term for small pieces of wholesome cooked tuna meat from the whole tuna, or from parts of tuna, not utilized in the packing of fancy or standard grades of tuna but free from dark meat, bones, skin, extraneous tissue and debris.

(2) The term "White Meat Flakes" as herein used shall be deemed to be the descriptive term for like small pieces of wholesome cooked albacore meat packed in the same manner. [Rule 1]

§ 146.2 *Deceptive designations.* It is an unfair trade practice to sell, offer for sale, advertise, describe or otherwise represent, directly or indirectly, any industry product as "Fancy Tuna", "Fancy White Meat Tuna", "Standard Tuna", "Standard White Meat Tuna", "Tuna Flakes", "Flakes", "White Meat Flakes", or by similar designation, when such product does not conform to the definitions set out in Rule 1 above. [Rule 2]

§ 146.3 *Deceptive concealment of species and quality.* In advertising, describing, representing, offering for sale or selling canned tuna or canned tuna products, it is an unfair trade practice to deceptively conceal or fail or refuse to disclose the species of tuna used in the product and the grade or quality thereof, or to conceal or fail or refuse to disclose any other material fact respecting the product, where such concealment or nondisclosure is practiced with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public. [Rule 3]

§ 146.4 *Misuse of terms "Extra Fancy", "Extra Select", etc.* It is an unfair trade practice to sell, offer for sale, advertise, describe, or otherwise represent any canned tuna or canned tuna product as "Extra Fancy", "Extra Select", "Extra Select Fancy", "Extra Fancy Fillet", "Extra Quality", "De Luxe Fancy", "De Luxe", "Select", "Choice", or by similar designation or other representation, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public into the belief that such canned tuna or canned tuna product is of a quality superior to either the fancy grade or the standard grade of tuna, or to some other grade, kind, or character of tuna, when such is not true in fact; or into any other erroneous belief. [Rule 4]

§ 146.5 *Misrepresentation of industry products in general.* The practice of selling, advertising, describing, or otherwise representing canned tuna or canned tuna products in a manner which is calculated to mislead or deceive or has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the character, nature, content, brand, grade, quality, quantity, origin, substance, material, size, prepa-

ration, packing, distribution, or manufacture of such products, or ingredients thereof, or in any other material respect, is an unfair trade practice. [Rule 5]

§ 146.6 *Deceptive depictions in general.* It is an unfair trade practice to use in relation to industry products any photograph, cut, engraving, insignia, design, illustration, or pictorial or other depiction or device (in catalogs, sales literature, advertisements, or other representations) which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public respecting the character, nature, content, brand, grade, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of any products of the industry, or ingredients thereof; or which is false, misleading, or deceptive in any other respect. [Rule 6]

§ 146.7 *Misrepresentation of term "Tonno", foreign insignia, etc.* (a) It is an unfair trade practice to use the term "Tonno", or designation of similar import, as descriptive of canned tuna or canned tuna products when such products are not composed of tuna meat in large solid pieces packed with olive oil and salt. This shall not be construed as excluding the addition of one or two small pieces of solid meat where necessary to bring the contents up to the required net weight. No flakes, however, shall be added at the time of packing.

(b) It is also an unfair trade practice to use such term "Tonno", or designation of similar import, or any pictorial or other representations, foreign insignia or insignia indicating foreign origin, foreign words, phrases, or other devices, in such manner as to have the capacity and tendency or effect (1) of confusing, misleading, or deceiving the purchasing or consuming public into the belief that such products are from waters off the coast of Italy or other foreign country, or are packed in or imported from Italy or other foreign country, when such is not the fact; or (2) of confusing, misleading, or deceiving the purchasing or consuming public into any other erroneous belief. [Rule 7]

§ 146.8 *Imitation of trade-marks, trade names, etc.* The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice. [Rule 8]

§ 146.9 *Use of slack-filled or short-weight containers.* It is an unfair trade practice to sell, advertise, describe, or otherwise represent, canned tuna or canned tuna products packed in slack-filled or short-weight containers, or packed in odd-sized containers simulating in size or shape standard sized or shaped containers which are known to the public as standard containers of definite capacity, with the tendency or effect of misleading or deceiving the purchasing or consuming public as to the contents of such containers or the amount of tuna or tuna products contained therein; or which are packed in containers so made, formed, or filled as to be otherwise misleading. [Rule 9]

§ 146.10 *Defamation of competitors or disparagement of their products.* The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice. [Rule 10]

§ 146.11 *Substituting inferior products for those ordered.* The practice of using or substituting any product of the industry inferior in grade or quality to that specified by the purchaser, without the consent of said purchaser to such use or substitution, or with the capacity and tendency or effect of otherwise misleading or deceiving the purchasing or consuming public, is an unfair trade practice. [Rule 11]

§ 146.12 *Misuse of word "Free".* The use of the word "Free", or the equivalent thereof, where not properly or fairly qualified when the article is in fact not free, with the capacity or tendency to mislead or deceive the purchasing or consuming public, is an unfair trade practice. [Rule 12]

§ 146.13 *Fictitious prices.* Offering canned tuna or canned tuna products for sale at prices purported to be reduced from what are in fact fictitious prices, or offering such products for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice. [Rule 13]

§ 146.14 *False invoicing.* Withholding from or inserting in an invoice, billing, or statement any material information by reason of which omission or insertion a false record is made, wholly or in part, of the transaction which such invoice or billing or statement purports to represent, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice. [Rule 14]

§ 146.15 *Inducing breach of contract.* Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice. [Rule 15]

§ 146.16 *Commercial bribery.* It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors. [Rule 16]

§ 146.17 *Enticing away employees of competitors.* Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice. [Rule 17]

§ 146.18 *Unfair threats of infringement suits.* The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers or competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice. [Rule 18]

§ 146.19 *Consignment distribution.* It is an unfair trade practice for any member of the industry to employ the practice of shipping industry products on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying, or preventing competition or tending to create a monopoly or to unreasonably restrain trade. Nothing in this rule shall be construed as restricting or preventing consignment shipping or marketing of industry products in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution is not effected. [Rule 19]

§ 146.20 *Selling below cost.* The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition. Sales below cost

by a competitor not in a sufficiently strong competitive position to produce, and not actually producing, the monopolistic or restraining effect mentioned, do not fall within the inhibitions of this rule.

The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise. [Rule 20]

§ 146.21 (a) *Prohibited discriminatory prices, or rebates, refunds, discounts, credits, etc., which effect unlawful price discrimination.* It is an unfair trade practice for any member of the industry engaged in commerce,[2] in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, or credit, or the granting of free goods, or other form of price differential, where such rebate, refund, discount, or credit, or the granting of free goods, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,[2] and where the effect thereon may be substantially to lessen competition or tend to create a monopoly in any line of commerce,[2] or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce[2] from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited brokerage and commissions.* It is an unfair trade practice for any member of the industry engaged in commerce[2], in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited advertising or promotional allowances, etc.* It is an unfair trade practice for any member of the industry engaged in commerce[2] to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited discriminatory services or facilities.* It is an unfair trade practice for any member of the industry engaged in commerce[2] to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or receiving an illegal discrimination in price.* It is an unfair trade practice for any member of the industry engaged in commerce[2], in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 21.

(f) *Purchases by schools, colleges, universities, public libraries, churches hospitals, and charitable institutions not operated for profit.* The foregoing provisions of this Rule 21 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 21 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit. (52 Stat. 446; Supp. 4 U.S.C. Title 15, Sec. 13c) (Rule 21)

§ 146.22 *Unlawful interference with raw material purchases:* It is an unfair trade practice for any member of the industry, by means of any monopolistic practices or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his raw materials and supplies from whomsoever he chooses, or to sell his product to whomsoever he chooses. [Rule 22]

§ 146.23 *Aiding or abetting use of unfair trade practices.* It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules. [Rule 23]

Group II

Compliance with the trade practice provisions embraced in the Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not, *per se*, constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition, or unfair or deceptive acts or practices, corrective proceedings may be instituted by the Commission as in the case of a violation of Group I rules.

Cost records. It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs. (Rule A)

Repudiation or cancellation of contracts. Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation or cancellation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry. (Rule B)

A Committee on trade practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

[2] As here used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided,* That this shall not apply to the Philippine Islands.

Repromulgated and reissued by the Federal Trade Commission as of August 27, 1940.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-3572; Filed, August 26, 1940; 11:18 a. m.]

TITLE 19—CUSTOMS DUTIES

CHAPTER I—BUREAU OF CUSTOMS

[T. D. 50217]

WILD ANIMALS FROM PERU

TREASURY DECISION 48709,[1] REQUIRING CONSULAR CERTIFICATES PURSUANT TO SECTION 527, TARIFF ACT OF 1930, IN CONNECTION WITH VICUNAS FROM PERU, SUPPLEMENTED TO INCLUDE CHINCHILLAS AND GUANACOS FROM PERU

AUGUST 21, 1940.

You are hereby advised that under present laws and decrees the Government of Peru absolutely prohibits the hunting of vicuna (Auchenia vicuna), chinchilla (Ericmys Chinchilla), and guanaco (Auchenia guanaco).

In view of the foregoing, Treasury Decision 48709, dated December 15, 1936, is supplemented to include the chinchilla and the guanaco, and collectors of customs shall require, pursuant to the provisions of section 527, Tariff Act of 1930 (19 U.S.C. 1527), consular certificates before permitting the entry of the vicuna, chinchilla, or guanaco or parts or products thereof imported directly or indirectly from Peru.

[SEAL] W. R. JOHNSON,
Commissioner of Customs.

[F. R. Doc. 40-3551; Filed, August 23, 1940; 3:21 p. m.]

TITLE 26—INTERNAL REVENUE

CHAPTER I—BUREAU OF INTERNAL REVENUE

[T.D. 5004]

SUBCHAPTER C—MISCELLANEOUS EXCISE TAXES

PART 190—RECTIFICATION OF SPIRITS AND WINES

Section 2803 (c) of the Internal Revenue Code, as amended by section 1 of the Act of June 24, 1940 (Public—No. 654—76th Congress) reads as follows:

(c) UNUSED STAMPS; EXCHANGE, REFUND, ETC. The Commissioner of Internal Revenue, under regulations prescribed by him and approved by the Secretary of the Treasury, may redeem or make allowance for any unused stamps issued under section 203 of the Liquor Taxing Act of 1934 or subsection (b) of this section by exchanging them for other stamps of the same kind or by refunding moneys received therefor: *Provided*, That stamps may be exchanged or the value thereof refunded only in quantities of the value of $5 or more: *And provided further*, That no claim for the exchange of strip stamps or refund therefor shall be allowed unless presented within two years after the date on which such stamps were lawfully issued. There are hereby authorized to be appropriated annually, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this provision.

Section 3 of the Act of June 24, 1940 (Public—No. 654—76th Congress) reads as follows:

SEC. 3. Notwithstanding the limitations contained in sections 2803 (c) and 2903 (e), Internal Revenue Code, as amended and inserted, respectively, by this Act, as to the time within which claims under such sections must be presented, claims under such sections for the exchange of or refund for stamps lawfully issued prior to the date of enactment of this Act may be allowed if presented within two years from the date of enactment of this Act."

Section 1650 of the Internal Revenue Code, added by section 210 of the Revenue Act of 1940 (Public—No. 656—76th Congress), reads as follows:

(a) In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading "Defense-Tax Rate":

Section	Description of tax	Old rate	Defense-tax rate
*	* *	*	*
3250 (f) (1)	Rectifiers	$200	$220
3250 (f) (1)	Rectifiers	100	110
*	* *	*	*

Section 3190 of the Internal Revenue Code, added by section 214 of the Revenue Act of 1940 (Public—No. 656—76th Congress), reads as follows:

In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading "Defense-tax Rate":

Section	Description of tax	Old rate	Defense-tax rate
		Cents	*Cents*
3030 (a) (1) (A)	Still wines	5	6
3030 (a) (1) (A)	Still wines	15	18
3030 (a) (1) (A)	Still wines	25	30
3030 (a) (2)	Sparkling wines	2½	3
3030 (a) (2)	Sparkling wines	1¼	1½
3030 (a) (2)	Liqueurs, cordials, etc	1¼	1½
*	* *	*	*

Pursuant to the foregoing provisions of law and to sections 2801, 2803 (d), 2871, 3030 (a), and 3176 of the Internal Revenue Code, and section 5 (e) of the Federal Alcohol Administration Act, as amended (27 U.S.C. Sup., 205), § 190.68 [Regs. 15[1]] is hereby revoked, and §§ 190.108 (a), (b), 190.120, 190.130, 190.131, 190.132, 190.157, 190.158, 190.220, 190.267, 190.268, 190.270, 190.272, 190.290, 190.341, 190.349, 190.360, 190.403, 190.408, and 190.469 [Regs. 15] are hereby amended to read as follows:

§ 190.108 *Change in individual, firm, or corporate name.* Where there is a change in the individual, firm, or corporate name of the rectifier, he must comply with the following requirements:

(a) *Amended permit.* Procure from the district supervisor under the Federal Alcohol Administration Act an amended basic permit authorizing operation of the rectifying plant under the new name.

(b) *Amended notice, Form 27-B.* Submit to the district supervisor an amended notice on Form 27-B, in triplicate, covering the new name.

§ 190.120 *Examination of other qualifying documents.* Upon receipt of the notice, plat, plans, bond, and other documents required by these regulations of persons intending to qualify as rectifiers, the district supervisor will examine the same to determine whether they have been properly executed, and whether they reflect compliance with the requirements of the law and regulations. Where any required document has not been filed, or where errors or discrepancies are found in those filed, or where the documents filed do not reflect compliance with these regulations, action thereon will be held in abeyance until the omission, or error or discrepancy, has been rectified, and there has been full compliance with all requirements.*

§ 190.130 *Approval of qualifying documents.* If the district supervisor finds, upon examination of the inspection report, that the person seeking to qualify as a rectifier has complied in all respects with the requirements of law and these regulations, and the rectifier's bond, Form 34, may properly be approved under § 190.129, and if the applicant is entitled to a permit, he will note his recommendation for approval on all copies of the bond and notice, and his approval on all copies of the plat and plans, and will forward all copies of the bond and notice, and the original copy of the plat and plans, and other qualifying documents, together with a copy of all inspection reports, to the Commissioner for final action. The issuance of a permit should be withheld pending approval by the Commissioner of the notice, bond, and other qualifying documents required under the internal revenue laws.*

§ 190.131 *Disapproval of qualifying documents.* If the district supervisor finds that the applicant has not complied in all respects with the requirements of the law and regulations, or that the situation of the rectifying plant is such as would enable the rectifier to defraud the United States, or the bond should be disapproved under §190.129, he will note his recommendation for disapproval on the bond, and will for-

[1] 1 F.R. 2164.

[1] 5 F.R. 2016.

*Issued under the authority contained in sections 2801 (e) (1) and 3176, Internal Revenue Code (Public No. 1, 76th Congress).

ward to the Commissioner for final action such copies of the qualifying documents as are required to be so forwarded by the preceding section in the case of recommendation for approval, together with a copy of all inspection reports. Where a bond is recommended for disapproval, the district supervisor will furnish the Commissioner with a full statement of the reasons therefor. If the applicant is not entitled to a permit, the district supervisor will, upon disapproval of the application therefor, return all copies of the qualifying documents to the applicant without action thereon or reference to the Commissioner.*

§ 190.132 *Disposition of qualifying documents.* Where the rectifier's bond, Form 34, notice Form 27–B, and special application Form 1613, if any, are approved by the Commissioner. the district supervisor will, upon receipt of approved copies of such documents from the Commissioner, as provided in Article XVIII, forward one copy of the bond, notice, special application, plat, plans, and other qualifying documents to the rectifier and will retain one copy of such qualifying documents for the file. The extra copy of the special application, Form 1613, if any, received from the Commissioner will be placed by the district supervisor in the file of the distiller. If the rectifier's bond, or special application, is disapproved, the district supervisor will, upon receipt from the Commissioner of the disapproved copies of such documents and other qualifying documents submitted therewith, return all copies of the qualifying documents to the proprietor, with advice as to the reasons for such disapproval.*

§ 190.157 *Rectifier's special tax.* Every person engaged in business as a rectifier, within the meaning of the term as defined in Article IV, must file Form 11 with the collector and pay special tax as such. Persons rectifying less than 500 barrels a year, counting 40 proof gallons to the barrel (i. e., less than 20,000 proof gallons), must pay special tax at the rate of $110 per year, and persons rectifying 500 barrels or more a year (i. e., 20,000 proof gallons or more) must pay special tax at the rate of $220 per year.* (Secs. 1650 (a), 3250 (f) (1), I.R.C.)

§ 190.158 *Change to higher or lower rate.* A rectifier who has paid the special tax as a rectifier of less than 500 barrels and who exceeds that quantity must immediately pay the special tax due at the higher rate ($220 per year) to the collector for the full period, and obtain a new special tax stamp. The rectifier may submit the stamp representing the special tax paid at the lower rate to the collector with a claim on Form 843 for redemption thereof. A rectifier who has paid special tax at the higher rate, but actually rectifies less than 500 barrels of spirits during the year, may likewise procure a new special tax stamp at the lower rate ($110) and submit the stamp representing the tax paid at the higher rate to the collector with a claim on Form 843 for redemption thereof.* (Secs. 1650 (a), 3250 (f) (1), 3304, I.R.C.)

§ 190.220 *Additional wine tax.* Where the taxable grade of wine is increased by blending, additional gallonage wine tax must be paid on the resultant product representing the difference between the tax originally paid on the wine and the tax due on the blended product, as provided in Article XXIX. For example, if 100 gallons of wine containing 20 per cent alcohol, on which wine tax in the amount of $18 has been paid, are blended with 100 gallons of wine containing 12 per cent alcohol, on which wine tax in the sum of $6 has been paid, making a total wine tax paid on the two wines of $24, and the resultant product contains 16 per cent alcohol, the wine tax on which would amount to $36, additional wine tax of $12 must be paid on the blended product, regardless of whether or not the 30-cent rectifying tax is incurred by the blending.* (Secs. 3030 (a), 3190, I.R.C.)

§ 190.267 *Vermouth.* Vermouth made at a rectifying plant, which is subject to the rectifying tax of 30 cents per proof gallon imposed by section 2800 (a) (5), I.R.C., is in addition thereto subject to the tax imposed upon vermouth by section 3030 (a) (1), as amended by section 3190, I.R.C., which tax is as follows:

(a) On vermouth containing not more than 14 per centum of absolute alcohol, 6 cents per wine gallon, the per centum of alcohol to be reckoned by volume and not by weight;

(b) On vermouth containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 18 cents per wine gallon;

(c) On vermouth containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol, 30 cents per wine gallon;

(d) All vermouth containing more than 24 per centum of absolute alcohol by volume (except vermouth containing tax-paid sweet wine, citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, or apple wine, fortified, respectively, with grape brandy, citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, or apple brandy) shall be classed as distilled spirits and shall be taxed accordingly.*

§ 190.268 *Liqueurs, cordials, etc., taxable under section 3030 (a) (2), I. R. C.* Section 3030 (a) (2), as amended by section 3190, I.R.C., imposes a tax on certain products of rectification, as follows:

On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine, citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, or apple wine, fortified, respectively, with grape brandy, citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, or apple brandy, one and one-half cents on each one-half pint or fraction thereof. Liqueurs, cordials, and similar compounds on which a tax is imposed and paid under section 3030 (a) (2), as amended by section 3190, I.R.C., are exempt from the 30-cent rectification tax. By "liqueurs, cordials, or similar compounds" is meant those products that contain not less than 2½ per cent by weight of sweetening material and possess the taste, aroma, and characteristics generally attributed to liqueurs and cordials.*

§ 190.270 *Carbonated and sparkling wines.* The carbonating of *tax-paid wines*, either by secondary fermentation of the wine within the bottle or container or by charging the wine artificially with carbon dioxide, must be done at a rectifying plant. The carbonated wine is subject to the rectification tax of 30 cents per proof gallon, and, in addition thereto, the tax imposed by section 3030 (a) (2), as amended by section 3190, I.R.C., upon sparkling wine, or artificially carbonated wine, as the case may be, must be paid. This tax is as follows:

(a) On each bottle or other container of champagne or sparkling wine, 3 cents on each one-half pint or fraction thereof;

(b) On each bottle or other container of artificially carbonated wine, 1½ cents on each one-half pint or fraction thereof;

(c) Any of the foregoing articles containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.*

§ 190.272 *Blended wines.* Any blending of tax-paid wines by rectifiers, except the blending of domestic tax-paid wines for the sole purpose of perfecting such wines according to recognized commercial standards, subjects the resultant product to the 30-cent rectification tax. Where the taxable class of wine is increased by blending wines with each other, additional wine tax due on the blended wines must be paid, regardless of whether or not the 30-cent rectification tax is incurred by such blending. This additional wine tax represents the difference between the wine tax due on the blended wine under its new classification and the tax previously paid on the wines used for such blending. Section 3030 (a) (1), as amended by section 3190, I.R.C., imposes a tax upon all still wines, and all artificial or imitation wines or compounds sold as still wine, at the following rates:

(a) On wines containing not more than 14 per centum of absolute alcohol, 6 cents per wine gallon, the per centum

of alcohol to be reckoned by volume and not by weight;

(b) On wines containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 18 cents per wine gallon;

(c) On wines containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol, 30 cents per wine gallon;

(d) All such wines containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.*

§ 190.290 *Approval by officer assigned to plant.* If the officer assigned to the plant is satisfied that Form 237 covers lawful, tax-paid spirits and is correctly executed, he will, after ascertaining from the approved formula the rate of tax applicable, note his approval on each copy of the form, subject to payment of tax, filling in the date of approval and the tax or taxes to which the spirits are subject, as "Tax at 30 cents per proof gallon," "Tax at _____ cents per wine gallon," and "Tax at _____ cents per half-pint or fraction thereof in each bottle," as the case may be (see Article XXIX). The officer will then return all copies of Form 237 to the rectifier.*

§ 190.341 *Gauge.* When preparing application for the dumping of spirits for bottling without rectification, the rectifier will enter in the space provided therefor on Form 230 the details of the withdrawal gauge for tax-payment. An actual gauge of the spirits dumped will, however, be made in the bottling tank after they have been reduced to bottling proof, where such reduction is permissible, and before they are released by the Government officer for bottling, and the details of such gauge will be entered in the space provided therefor on the form. Where spirits are to be bottled from the original package, as provided in section 190.347, the details of the withdrawal gauge for tax-payment will likewise be entered on Form 230 at the time the application is prepared, but an actual gauge will be made before the bottling begins and the details of such gauge will also be entered on the form.*

§ 190.349. *Transfer of products to wine bottling room.* Where the rectifier desires to bottle from the original package wines, cordials, or liqueurs authorized by the district supervisor to be so bottled, such packages will be placed in the wine bottling room and Form 230 will be prepared and submitted to the Government officer assigned to the rectifying plant, or to the district supervisor or designated officer, for approval; but no bottling will be done until the packages have been inspected by an authorized Government officer and an actual gauge of the spirits has been made and the details of such gauge entered on Form 230. When wines, cordials, or liqueurs are to be bottled in the wine bottling room, the rectifier will attach one copy of the approved Form 230 to the door of such room.*

§ 190.360 *Rebottling, relabeling, and restamping of bottled spirits.* Where distilled spirits packaged in bottles are to be rebottled for domestic sale, the bottles, if of a capacity of one-half pint or greater and not exceeding 1 gallon, must conform to the requirements of 26 CFR, Part 175 [Regs. 13 [2]]. The new label must be covered by an appropriate certificate of label approval or a certificate of exemption from label approval. If the new label is covered by a certificate of exemption from label approval it must conform to the requirements of Regulations 13. If the spirits have left the possession of the original bottler and are to be relabeled without rebottilng, authorization to relabel the spirits must be obtained in accordance with regulations issued under the Federal Alcohol Administration Act and submitted to the Government officer assigned to the plant, or to the district supervisor or other designated approving officer. Whenever bottled distilled spirits are dumped for rebottling, the red strip stamps on the bottles must be destroyed at the time of dumping, and new red strip stamps must be affixed to the bottles in which the spirits are rebottled.* (Secs. 2803, as amended, 2871, I.R.C.)

§ 190.403 *Exchange and redemption of stamps.* Unused red strip stamps, in quantities of the value of $5 or more, issued under section 203 of the Liquor Taxing Act of 1934 or subsection (b) of section 2803, Internal Revenue Code, may be exchanged for other stamps of the same kind and in any prescribed denomination, or the value thereof may be refunded, provided that a claim for such exchange or refund, establishing the lawful issuance and ownership of the stamps, is filed with the collector of internal revenue who issued the stamps (1) within two years after the date on which such stamps were lawfully issued or (2) if the stamps were lawfully issued prior to June 24, 1940, within two years from the latter date: *Provided, however,* That the value of unused stamps which have been destroyed may be refunded upon the filing of a claim as provided herein with proof to the satisfaction of the Commissioner of the destruction of the stamps. Claims for exchange of stamps will be filed on Form 1579 and claims for refund of the value of stamps on Form 843, in accordance with procedure prescribed by the Commissioner.* (Sec. 2803, I.R.C., as amended; Sec. 3, Act of June 24, 1940 (Public—No. 654—76th Congress))

§ 190.408 *Withholding release of spirits.* Where rectifiers of distilled spirits are found to be using labels other than those covered by a certificate of approval of labels or a certificate of exemption from label approval, or to be affixing labels covered by such certificates to spirits which do not conform to such labels, or where rectifiers bottling spirits imported in bulk do not have in their possession such certificates of origin, age, and class and type as are required, the officer will withhold release of the spirits and will make a report of the facts to the district supervisor, accompanied by copies of the labels in question. (Sec. 505, 49 Stat. 1965; 27 U.S.C. Sup., 205)

§ 190.469 *Disposition of red strip stamps.* All unused red strip stamps, if any, belonging to the proprietor at the time of permanent discontinuance of business will be inventoried by denomination, serial number, and quantity, by the storekeeper-gauger or other officer designated by the district supervisor to perform such duty. The officer will deliver such stamps to the proprietor and take his receipt therefor, in triplicate. When delivering the stamps the officer will advise the proprietor that the value of the stamps, if in quantities of the value of $5 or more, may be refunded, provided that a claim for such refund on Form 843, establishing the lawful issuance and ownership of the stamps, is filed with the collector of internal revenue who issued the stamps (1) within two years after the date on which such stamps were lawfully issued or (2) if the stamps were lawfully issued prior to June 24, 1940, within two years from the latter date; or that such unused stamps may be destroyed in the presence of the Government officer and the proprietor thereby relieved from further accountability for the stamps. If the stamps are not surrendered to the collector for refund of their value or are not destroyed, the proprietor must account for the stamps each month by rendering Form 96, in duplicate, to the district supervisor. The officer shall make a notation on the receipt as to the disposition made or to be made of the stamps. One copy of the receipt will be delivered to the proprietor and the original and one copy will be delivered to the district supervisor, who will forward the original to the Commissioner.* (Sec. 2803, I.R.C., as amended; Sec. 3, Act of June 24, 1940 (Public—No. 654—76th Congress))

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved: August 21, 1940.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

[F. R. Doc. 40-3552; Filed, August 24, 1940; 11:01 a. m.]

[2] 5 F.R. 1245.

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. 486-FD]

APPLICATION OF THE NORFOLK AND WESTERN RAILWAY COMPANY

ORDER GRANTING RENEWAL OF EXEMPTION

The Norfolk and Western Railway Company, Applicant herein, on July 10, 1937, having filed with the National Bituminous Coal Commission a verified ap-

plication for exemption with respect to certain bituminous coal produced and consumed by the Applicant, or produced and transported by the Applicant to itself for consumption by it in its operation as a common carrier by railroad; and

The Commission having entered, on August 31, 1938, an order pursuant to such application, in Docket No. 486–FD, ordering that the provisions of Section 4, Part II (1) of the Bituminous Coal Act of 1937 apply to the bituminous coal produced by Applicant at its mines known as "Howard Collieries" and "Vulcan Collieries", located in Mingo County, West Virginia, and "Pond Creek Collieries", located in Pike County, Kentucky, which is consumed by the Applicant in its operation as a common carrier by railroad, and that such coal shall not be deemed subject to the provisions of Section 4 of the Bituminous Coal Act of 1937; and

The Director of the Bituminous Coal Division, having on September 2, 1939, entered an order in Docket No. 486–FD renewing the exemption granted to the Applicant by said order of August 31, 1938, providing however, that said order of August 31, 1938 and the exemption granted thereby should automatically terminate and expire, unless the Applicant should, on or before August 1, 1940, file an application for renewal of said order; and

Applicant, on July 31, 1940, having filed a verified application for renewal of said order, which application contains a statement of the quantities of coal produced by Applicant during the years 1938 and 1939 at its mines located in Mingo County, West Virginia, and Pike County, Kentucky, and consumed by Applicant in its operation as a common carrier by railroad, and which application also contains a statement that all the facts as set forth in the application of July 10, 1937, remain true and correct; and

The Director having determined that the conditions supporting the exemption granted by the order of August 31, 1938, continue to exist:

It is ordered, That the application filed by the Applicant for renewal of said Order of August 31, 1938, be and the same is hereby granted;

Provided, however, That said Order of August 31, 1938, and the exemption granted thereby shall automatically terminate and expire:

1. Unless the Applicant, at the expiration of six months from the date of this Order, and at the expiration of each six-month period thereafter, files with the Director a verified report containing the following information which the Director hereby finds to be necessary and appropriate to enable him to determine whether the conditions supporting the exemption granted to the Applicant continue to exist:

(a) The full name and business address of the Applicant and the name and location of the mine or mines covered by this application;

(b) The total tonnage of bituminous coal produced by the Applicant during the preceding six months at such mine or mines;

(c) The total tonnage of such production which was consumed by the Applicant, and the nature and purpose of such consumption;

(d) A statement that all of the facts set forth in the original application for exemption filed July 10, 1937, remain true and correct.

2. Unless the Applicant shall immediately notify the Director upon:

(a) Any change in the ownership of the mine or mines from which the coal in question was produced, or in the ownership of the plant or factory or other facilities at which the coal is consumed;

(b) Any change in the agency or instrumentality through which the coal is being produced on the date of this order.

It is further ordered, That the Director at any time, upon his own motion or upon the petition of any interested person, may direct the Applicant to show cause why the exemption granted by the Order of August 31, 1938, should not be terminated. Any persons filing such a petition shall serve a copy thereof upon the Applicant herein.

Dated, August 23, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40–3549; Filed, August 23, 1940; 3:18 p. m.]

[Docket Nos. 481–FD, 482–FD, 518–FD, 520–FD]

IN THE MATTER OF THE APPLICATIONS FOR EXEMPTION UNDER THE SECOND PARAGRAPH OF SECTION 4–A OF THE BITUMINOUS COAL ACT OF 1937, BY THE FOLLOWING APPLICANTS: SAND GAP COAL COMPANY, INC., SCRIVNER & MOORE, W. A. DEAN, AND JACKSON COUNTY COAL COMPANY, INC.

ORDER ADOPTING FINDINGS OF FACT AND CONCLUSIONS AND DENYING EXEMPTIONS

The above named Applicants having filed applications with the National Bituminous Coal Commission, requesting exemption from the provisions of Section 4 of the Bituminous Coal Act of 1937, under the second paragraph of Section 4–A thereof, upon the ground that coal produced at the several mines of the Applicants is sold at the mine tipple to truckers, and that practically none, if any, of such coal is resold or delivered at any point outside of the State of Kentucky or beyond a maximum distance of seventy-five miles from the mines; and

Pursuant to Order and Notice of the Director of the Bituminous Coal Division of the United States Department of the Interior, successor to the Commission, a hearing upon the applications having been held before a duly designated Examiner of the Division on August 29, 30, and 31, and September 1, 5, and 6, 1939, at which time all interested parties were afforded full opportunity to appear, to present evidence, to examine and cross-examine witnesses, and otherwise to be heard; and

The Examiner having submitted his report containing proposed Findings of Fact and Conclusions and recommending that the applications for exemption be denied, which report was duly served upon parties to this proceeding; and exceptions to the report of the Examiner having been filed by counsel for Applicants; and

The Director having considered the applications, the evidence and the entire record in this matter, including the briefs and the exceptions to the Examiner's report, and upon the basis thereof the Director having concluded that the Findings of Fact and Conclusions of the Examiner are proper and supported by the evidence, and having issued and filed an Opinion thereon:

It is ordered, That the Findings of Fact and Conclusions of the Examiner as contained in his report, a copy of which is on file in the office of the Division at Washington, D. C., be and the same are hereby adopted and made the Findings of Fact and Conclusions of the Director and the same by this reference are incorporated herein and made a part hereof; and

It is further ordered, That the exemptions requested in the present applications be and the same are hereby denied.

Dated, August 23, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40–3550; Filed, August 23, 1940; 3:18 p. m.]

DEPARTMENT OF AGRICULTURE.

Rural Electrification Administration.

[Administrative Order No. 507]

AMENDMENTS OF ALLOCATIONS OF FUNDS FOR LOANS

AUGUST 16, 1940.

I hereby amend:

(a) Administrative Order No. 381, dated August 16, 1939, by reducing the allocation of $5,000 therein made for "Illinois 0032W1 McDonough" by $3,500, so that the reduced allocation shall be $1,500;

(b) Administrative Order No. 368, dated June 30, 1939, and Administrative Order No. 457, dated May 10, 1940, by rescinding the allocation of $6,000 therein made for "Indiana 9–0055W1 Tippecanoe";

(c) Administrative Order No. 381, dated August 16, 1939, by rescinding the allocation of $5,000 therein made for "Mississippi 0020W1 Yazoo";

(d) Administrative Order No. 140, dated September 20, 1937, by reducing the allocation of $5,000 therein made for "Missouri 8020W Marion" by $4,000, so that the reduced allocation shall be $1,000;

(e) Administrative Order No. 248, dated May 16, 1938, by reducing the allocation of $5,000 therein made for "South Dakota 8006W1 Union" by $3,000, so that the reduced allocation shall be $2,000;

(f) Administrative Order No. 341, dated May 2, 1939, by rescinding the allocation of $3,000 therein made for "Texas R9052W1 Fannin"; and

(g) Administrative Order No. 348, dated May 19, 1939, by reducing the allocation of $6,000 therein made for "Texas R9088W1 Nueces" by $4,000, so that the reduced allocation shall be $2,000.

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40-3545; Filed, August 23, 1940; 2:57 p. m.]

[Administrative Order No. 508]

ALLOCATION OF FUNDS FOR LOANS

AUGUST 20, 1940.

By virtue of the authority vested in me by the provisions of Section 4 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for a loan for the project and in the amount as set forth in the following schedule:

Project designation:	*Amount*
Georgia 1081C1 Towns	$402,000

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40-3557; Filed, August 24, 1940; 11:37 a. m.]

Surplus Marketing Administration.

DESIGNATION OF AREAS UNDER SURPLUS FOOD STAMP PROGRAM

Pursuant to the applicable regulations and conditions prescribed by Henry A. Wallace, Secretary of Agriculture of the United State of America, the following areas are hereby designated as areas in which food order stamps may be used:

The area within the county limits of Philadelphia, Pennsylvania, and the immediate environs thereof as defined by the local representative of the Surplus Marketing Administration. The posting of the definition of "the immediate environs" in the office of the local representative of the Surplus Marketing Administration shall constitute due notice thereof.

The area within the county limits of Charleston County, South Carolina, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Tarrant County, Texas, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Dallas County, Texas, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Lubbock County, Texas, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Hale County, Texas, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Kern County, California, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Kings County, California, and such area adjacent thereto as may seen desirable to effectuate the program.

The area within the county limits of Tulare County, California, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Fresno County, California, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Eastland County, Texas, and such area adjacent thereto as may seem desirable to effectuate the program.

The area within the county limits of Craighead County, Arkansas, and such area adjacent thereto as may seem desirable to effectuate the program.

The posting of the definition of "and such area adjacent thereto" in the office of the local representative of the Surplus Marketing Administration shall constitute due notice thereof.

The effective dates for the above-mentioned areas shall be announced by the local representative of the Surplus Marketing Administration for the respective areas in local newspapers of general circulation.

[SEAL] PHILIP F. MAGUIRE,
Assistant Administrator.

AUGUST 22, 1940.

[F. R. Doc. 40-3546; Filed, August 23, 1940; 2:57 p. m.]

DEPARTMENT OF COMMERCE.

Bureau of Marine Inspection and Navigation.

[Order No. 49]

NOTICE REGARDING NAVIGATION CLOSING ON COLUMBIA RIVER DURING ASTORIA REGATTA

AUGUST 24, 1940.

Notice is hereby given that navigation will be closed on the Columbia River in the vicinity of Astoria, Oregon, for such periods as may be necessary, during the contests to be conducted by the Astoria Regatta Committee on August 28, 29, 30, and 31, 1940, in connection with the Regatta Program.

[SEAL] ROBERT H. HINCKLEY,
Acting Secretary of Commerce.

[F. R. Doc. 40-3544; Filed, August 24, 1940; 10:01 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

SUPPLEMENTARY DETERMINATION NO. 3,[1] IN MATTER OF APPLICATION FOR EXEMPTION OF DREDGING AND EXCAVATING OF SAND AND GRAVEL FROM SURFACE OR OPEN CUTS FROM MAXIMUM HOURS PROVISIONS OF FAIR LABOR STANDARDS ACT OF 1938, PURSUANT TO SECTION 7 (b) (3) OF THE ACT, PART 526 AS AMENDED OF REGULATIONS ISSUED THEREUNDER, AND PARAGRAPH (8) OF ORIGINAL DETERMINATION MADE IN MATTER OF SAND AND GRAVEL INDUSTRY PURSUANT TO HEARING HELD JUNE 19, 1939

Whereas, the Administrator determined after a public hearing held before Harold Stein, Presiding Officer, on June 19, 1939 that:

1. There is a branch of the sand and gravel industry wherein the plants normally shut down for about six months each year, except for an insubstantial amount of production that may be produced shortly before or shortly after the main production season. This branch is located in the colder and, in general, more northerly parts of the United States; and

3. The plants in the northern branch cease operation annually at a regularly recurring season of the year, except for sales, maintenance, and similar work, because the materials used by the industry are not available for excavation, handling and processing in the form in which they must be excavated, handled, and processed, i. e., as unfrozen sand and gravel, because of climatic factors; and

4. The northern branch of the sand and gravel industry is an industry of a seasonal nature within the meaning of Section 7 (b) (3) of the Act and Part 526 of Regulations issued thereunder; and

Whereas, paragraph (8) of the above Determination provides that it shall be without prejudice to a supplementary determination enlarging the scope of the Northern branch by the inclusion therein of such plants or groups of plants, if any, as operate in the same manner and for the same reasons as the plants in the Northern branch de-

[1] Supplementary Determination No. 2 appears at 5 F.R. 2675.

scribed in paragraphs 1 and 3 above; and

Whereas, the Klamath Concrete Pipe Company of Klamath Falls, Oregon, filed an application with the Wage and Hour Division, United States Department of Labor, pursuant to paragraph (8) of the above cited original determination in the matter of the sand and gravel industry, for a supplementary determination enlarging the scope of the Northern branch of the sand and gravel industry to include the dredging and excavating of sand and gravel by the Klamath Concrete Pipe Company, near Klamath Falls, Klamath County, Oregon; and

Whereas, it appears from the application filed by the Klamath Concrete Pipe Company of Klamath Falls, Oregon, that the sand and gravel plant of the aforesaid company in Klamath County, Oregon, operates in the same manner and for the same reason as the plants in the Northern branch described in paragraphs 1 and 3 of the original determination.

Now, therefore, upon consideration of the facts stated in the said application for supplementary determination, the Administrator hereby determines, pursuant to § 526.5 (b) (ii),[2] as amended, of the Regulations, that a *prima facie* case has been shown for enlarging the scope of the Northern branch of the sand and gravel industry, in accordance with paragraph (8) of the original determination and pursuant to section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder to include the sand and gravel plant of the Klamath Concrete Pipe Company, in Klamath County, Oregon.

In accordance with the procedure established by § 526.5 (b) (ii), as amended, of the Regulations, the Administrator for fifteen days following the publication of this determination will receive objection to the granting of the exemption and request for hearing from any interested person. Upon receipt of objection and request for hearing, the Administrator will set the application for the hearing before himself or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the *prima facie* case shown upon the application.

The application may be examined in Room 5220, U. S. Department of Labor, Washington, D. C.

Signed at Washington, D. C., this 16th day of August 1940.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 40-3541; Filed, August 23, 1940; 2:35 p. m.]

[2] 5 F.R. 711.

SUPPLEMENTARY DETERMINATION NO. 5,[1] IN THE MATTER OF APPLICATION FOR THE EXEMPTION OF THE QUARRYING OF CRUSHED STONE FROM SURFACE OR OPEN CUTS FROM THE MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938, PART 526, AS AMENDED, OF THE REGULATIONS ISSUED THEREUNDER, AND PARAGRAPH (8) OF THE ORIGINAL DETERMINATION MADE IN THE MATTER OF THE CRUSHED STONE INDUSTRY PURSUANT TO HEARING HELD JUNE 19, 1939

Whereas, the Administrator determined after a public hearing held before Harold Stein, Presiding Officer, on June 19, 1939 that:

1. There is a branch of the crushed stone industry wherein the plants normally shut down for about six months each year, except for an insubstantial amount of production that may be produced shortly before or shortly after the main production season. This branch is located in the colder and, in general, more northerly parts of the United States; and

3. The plants in the northern branch cease operation annually at a regularly recurring season of the year, except for sales, maintenance, and similar work, because the materials used by the industry are not available for excavation, handling and processing in the form in which they must be excavated, handled, and processed, i. e., as unfrozen ledges and banks of blasted rock, because of climatic factors; and

4. The northern branch of the crushed stone industry is an industry of a seasonal nature within the meaning of section 7 (b) (3) of the Act and Part 526 of regulations issued thereunder; and

Whereas, paragraph (8) of the above Determination provides that it shall be without prejudice to a supplementary determination enlarging the scope of the northern branch by the inclusion therein of such plants or groups of plants, if any, as operate in the same manner and for the same reasons as the plants in the northern branch described in paragraphs 1 and 3 above; and

Whereas, the National Crushed Stone Association filed an application with the Wage and Hour Division, United States Department of Labor, on behalf of the General Crushed Stone Company of Easton, Pennsylvania, pursuant to paragraph (8) of the above cited original determination in the matter of the crushed stone industry, to include the excavating, hauling, and processing of crushed stone by the General Crushed Stone Company at LeRoy, Genesee County, New York; and

Whereas, it appears from the application filed by the National Crushed Stone Association on behalf of the General Crushed Stone Company of Easton, Pennsylvania, that the crushed stone plant of the aforesaid company in Genesee County, New York, operates in the same manner and for the same reason as the plants in the northern branch described in paragraphs 1 and 3 of the original determination.

Now, therefore, upon consideration of the facts stated in the said application for supplementary determination, the Administrator hereby determines, pursuant to § 526.5 (b) (ii),[2] as amended, of the regulations, that a *prima facie* case has been shown for enlarging the scope of the northern branch of the crushed stone industry, in accordance with paragraph (8) of the original determination and pursuant to section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the regulations issued thereunder to include the crushed stone plant of the General Crushed Stone Company, in Genesee County, New York.

In accordance with the procedure established by § 526.5 (b) (ii), as amended, of the regulations, the Administrator for fifteen days following the publication of this determination will receive objection to the granting of the exemption and request for hearing from any interested person. Upon receipt of objection and request for hearing, the Administrator will set the application for the hearing before himself or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the *prima facie* case shown upon the application.

The application may be examined in Room 5220, U. S. Department of Labor, Washington, D. C.

Signed at Washington, D. C., this 16th day of August, 1940.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 40-3542; Filed, August 23, 1940; 2:35 p. m.]

[1] Supplementary Determination No. 4 appears at 5 F.R. 2949.

[2] 5 F.R. 711.

SUPPLEMENTARY DETERMINATION NO. 6, IN MATTER OF APPLICATION FOR EXEMPTION OF QUARRYING OF CRUSHED STONE FROM SURFACE OR OPEN CUTS FROM MAXIMUM HOURS PROVISIONS OF FAIR LABOR STANDARDS ACT OF 1938, PART 526, AS AMENDED, OF THE REGULATIONS ISSUED THEREUNDER, AND PARAGRAPH (8) OF ORIGINAL DETERMINATION MADE IN MATTER OF CRUSHED STONE INDUSTRY PURSUANT TO HEARING HELD JUNE 19, 1939

Whereas the Administrator determined after a public hearing held before Harold Stein, Presiding Officer, on June 19, 1939 that:

1. There is a branch of the crushed stone industry wherein the plants normally shut down for about six months each year, except for an insubstantial

amount of production that may be produced shortly before or shortly after the main production season. This branch is located in the colder and, in general, more northerly parts of the United States; and

3. The plants in the northern branch cease operation annually at a regularly recurring season of the year, except for sales, maintenance, and similar work, because the materials used by the industry are not available for excavation, handling and processing in the form in which they must be excavated, handled, and processed, i. e., as unfrozen ledges and banks of blasted rock, because of climatic factors; and

4. The northern branch of the crushed stone industry is an industry of a seasonal nature within the meaning of section 7 (b) (3) of the Act and Part 526 of regulations issued thereunder; and

Whereas paragraph (8) of the above Determination provides that it shall be without prejudice to a supplementary determination enlarging the scope of the northern branch by the inclusion therein of such plants or groups of plants, if any, as operate in the same manner and for the same reasons as the plants in the northern branch described in paragraphs 1 and 3 above; and

Whereas the National Crushed Stone Association filed an application with the Wage and Hour Division, United States Department of Labor, on behalf of the General Crushed Stone Company of Easton, Pennsylvania, pursuant to paragraph (8) of the above cited original determination in the matter of the crushed stone industry, to include the excavating, hauling, and processing of crushed stone by the General Crushed Stone Company at White Haven, Luzerne County, Pennsylvania; and

Whereas it appears from the application filed by the National Crushed Stone Association on behalf of the General Crushed Stone Company of Easton, Pennsylvania, that the crushed stone plant of the aforesaid company in Luzerne County, Pennsylvania, operates in the same manner and for the same reason as the plants in the northern branch described in paragraphs 1 and 3 of the original determination.

Now, therefore, upon consideration of the facts stated in the said application for supplementary determination, the Administrator hereby determines, pursuant to § 526.5 (b) (ii),[1] as amended, of the regulations, that a *prima facie* case has been shown for enlarging the scope of the northern branch of the crushed stone industry, in accordance with paragraph (8) of the original determination and pursuant to Section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the regulations issued thereunder to include the crushed stone plant of the General Crushed Stone Company, in Luzerne County, Pennsylvania.

[1] 5 F.R. 711.

In accordance with the procedure established by § 526.5 (b) (ii), as amended, of the regulations, the Administrator for fifteen days following the publication of this determination will receive objection to the granting of the exemption and request for hearing from any interested person. Upon receipt of objection and request for hearing, the Administrator will set the application for the hearing before himself or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the *prima facie* case shown upon the application.

The application may be examined in Room 5220, U. S. Department of Labor, Washington, D. C.

Signed at Washington, D. C., this 16th day of August 1940.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 40-3543; Filed, August 23, 1940; 2:35 p. m.]

NOTICE OF PUBLIC HEARING BEFORE SPECIAL INDUSTRY COMMITTEE FOR PUERTO RICO FOR RECEIVING EVIDENCE TO BE CONSIDERED IN RECOMMENDING MINIMUM WAGE RATES FOR EMPLOYEES IN PUERTO RICO ENGAGED IN NEEDLEWORK INDUSTRIES

In conformity with the Fair Labor Standards Act of 1938, 52 Stat. 1060, as amended by section 3 (c), (d), (e) and (f) Public Resolution No. 88, 76th Congress, Chapter 432—3rd Session, approved June 26, 1940, and with § 511.11 of Part 511 of the Rules and Regulations issued pursuant thereto, notice is hereby given to all interested persons that a public hearing will be held beginning September 30, 1940 either in San Juan or Mayaguez, Puerto Rico, for the purpose of receiving evidence to be considered by the Special Industry Committee for Puerto Rico in determining the highest minimum wage rates for employees in Puerto Rico in the needlework industries, which, having due regard to economic and competitive conditions, will not substantially curtail employment and will not give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico. Information regarding the precise hour and place at which such public hearing will be held may be obtained after September 24, 1940 by communicating with Charles A. Wood, Territorial Representative of the Wage and Hour Division of the United States Department of Labor, El Banco Popular Building, San Juan, Puerto Rico.

The Special Industry Committee for Puerto Rico was created by Administrative Order No. 58.[1] It is charged, in accordance with the provisions of the Fair Labor Standards Act of 1938 as amended and Rules and Regulations promulgated thereunder, with the duty of investigating conditions in the industries of Puerto Rico and of recommending to the Administrator minimum wage rates which may be lower than 30 cents but not higher than 40 cents per hour for all employees in Puerto Rico who within the meaning of said Act are "engaged in commerce or in the production of goods for commerce," excepting employees exempted by the provisions of section 13 (a) and employees coming under the provisions of section 14. Before any minimum wage rates recommended by the Committee are made effective, a public hearing will be held pursuant to Section 8 of the Act both in Puerto Rico and in Continental United States, at which interested persons will have an opportunity to present evidence on the questions whether such rates, if made effective, would substantially curtail employment in Puerto Rico or would give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico.

[1] 5 F.R. 2758.

Administrative Order No. 58 has directed the Special Industry Committee to proceed first to investigate conditions and to recommend to the Administrator minimum wage rates for employees in the needlework industries, and thereafter to investigate conditions respecting, and to recommend minimum wage rates for, such other employees as the Administrator may direct or, in the absence of such direction, as the Committee in its judgment shall determine. At the hearing noticed herein the Committee will receive material and hear testimony relating only to employees in the needlework industries.

Any person who, in the opinion of the Committee or its duly authorized subcommittee, has a substantial interest in the proceeding and is prepared to present material pertinent to the question under consideration, may appear on his own behalf or on behalf of any other person. Persons wishing to appear are requested to file with Charles A. Wood, Territorial Representative of the Wage and Hour Division of the United States Department of Labor, El Banco Popular Building, San Juan, Puerto Rico, not later than September 21, 1940, a notice of Intention to Appear containing the following information:

(1) The name and address of the person appearing.

(2) If he is appearing in a representative capacity, the name and address of the person or persons whom, or organization which, he is representing.

(3) A brief summary of the material intended to be presented.

(4) The approximate length of time which his presentation will consume.

All testimony will be taken under oath and subjected to reasonable cross examination by any interested person present. Testimony so received will be offered as

evidence at the public hearing to be held by the Administrator on such minimum wage recommendations as the Special Industry Committee for Puerto Rico may make.

Written statements of persons who cannot appear personally will be considered by the Committee provided that twenty copies thereof are received not later than September 21, 1940 at the Wage and Hour Division of the United States Department of Labor, El Banco Popular Building, San Juan, Puerto Rico. Any person appearing at the hearing who offers written material must submit twenty copies thereof.

Signed at Washington, D. C., this 24th day of August, 1940.

FRANCIS J. HAAS,
Chairman, Special Industry Committee for Puerto Rico.

[F. R. Doc. 40-3577; Filed, August 26, 1940; 11:49 a. m.]

[Administrative Order No. 60]

DESIGNATING ELAINE WRIGHT AS SPECIAL REPRESENTATIVE TO GRANT OR DENY EXTENSION OF CERTIFICATES FOR THE EMPLOYMENT OF HANDICAPPED WORKERS IN THE STATE OF PENNSYLVANIA

By virtue of and pursuant to the authority vested in me by the Fair Labor Standards Act of 1938, I, Philip B. Fleming, Administrator of the Wage and Hour Division, Department of Labor, hereby designate and appoint Elaine Wright as my authorized special representative with full power and authority to grant or deny extension of special certificates for the employment of handicapped workers in the State of Pennsylvania pursuant to the provisions of section 14 of the Fair Labor Standards Act of 1938 where such certificates expire on September 1, 1940, provided however that no such certificate shall be extended beyond October 15, 1940.

Signed at Washington, D. C., this 24th day of August 1940.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 40-3575; Filed, August 26, 1940; 11:48 a. m.]

[Administrative Order No. 62]

ACCEPTANCE OF RESIGNATION FROM AND APPOINTMENT TO INDUSTRY COMMITTEE NO. 15 FOR THE EMBROIDERIES INDUSTRY

By virtue of and pursuant to the authority vested in me by the Fair Labor Standards Act of 1938, I, Philip B. Fleming, Administrator of the Wage and Hour Division, Department of Labor,

Do hereby accept the resignation of Mr. Martin Somers from Industry Committee No. 15 for the Embroideries Industry and do appoint in his stead as representative for the employers on such Committee, Mr. I. Resnikoff, of Chicago, Illinois.

Signed at Washington, D. C., this 26th day of August, 1940.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 40-3576; Filed, August 26, 1940; 11:48 a. m.]

NOTICE OF ISSUANCE OF A SPECIAL CERTIFICATE FOR THE EMPLOYMENT OF LEARNERS

Notice is hereby given that a Special Certificate authorizing the employment of learners at hourly wages lower than the minimum rate applicable under section 6 of the Fair Labor Standards Act of 1938 is issued pursuant to Section 14 of the said Act and § 522.5 (b) of Regulations Part 522 (4 F.R. 2088), as amended, (4 F.R. 4226), to the employer listed below effective August 27, 1940. This Certificate is issued upon his representations that experienced workers for the learner occupations are not available and that he is actually in need of learners at subminimum rates in order to prevent curtailment of opportunities for employment. This Certificate may be canceled in the manner provided for in § 522.5 (b) of the Regulations and as indicated on the Certificate. Any person aggrieved by the issuance of this Certificate may seek a review of the action taken in accordance with the provisions of § 522.5 (b). The employment of learners under this Certificate is limited to the terms and conditions as designated opposite the employer's name.

NAME AND ADDRESS OF FIRM, PRODUCT, NUMBER OF LEARNERS, LEARNING PERIOD, LEARNER WAGE, LEARNER OCCUPATIONS, EXPIRATION DATE

Marathon Rubber Products Co., 218 Strowbridge Street, Wausau, Wisconsin; Rubberized Cloth and Garments; 50 learners; 8 weeks for any one learner; 75% of the applicable hourly minimum wage; Stitching and Cementing; October 24, 1940.

Signed at Washington, D. C., this 26th day of August 1940.

MERLE D. VINCENT,
Authorized Representative of the Administrator.

[F. R. Doc. 40-3574; Filed, August 26, 1940; 11:48 a. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS

Notice is hereby given that Special Certificates authorizing the employment of learners at hourly wages lower than the minimum wage rate applicable under section 6 of the Fair Labor Standards Act of 1938 are issued under Section 14 of the said Act and Section 522.5 of Regulations Part 522, as amended, to the employer listed below effective August 27, 1940. These Certificates may be canceled in the manner provided for in the Regulations and as indicated in the Certificate. Any person aggrieved by the issuance of any of these Certificates may seek a review of the action taken in accordance with the provisions of §§ 522.13 or 522.5 (b), whichever is applicable of the aforementioned Regulations.

The employment of learners under these Certificates is limited to the occupations, learning periods, and minimum wage rates specified in the Determination or Order for the Industry designated below opposite the employer's name and published in the FEDERAL REGISTER as here stated:

Regulations, Part 522, May 23, 1939 (4 F.R. 2088), and as amended October 12, 1939 (4 F.R. 4226).

Hosiery Order, August 22, 1939 (4 F.R. 3711).

Apparel Order, October 12, 1939 (4 F.R. 4225).

Knitted Wear Order, October 24, 1939 (4 F.R. 4351).

Textile Order, November 8, 1939 (4 F.R. 4531), as amended, April 27, 1940 (5 F.R. 1586).

Glove Order, February 20, 1940 (5 F.R. 714).

NAME AND ADDRESS OF FIRM, INDUSTRY, PRODUCT, NUMBER OF LEARNERS, AND EXPIRATION DATE

Commercial Trading Co., Inc., School Street, Bath, Maine; Apparel; Work Shirts and Pants; 5 learners (75% of the applicable hourly minimum wage); October 24, 1940.

Improved Mfg. Company, Union Street, Ashland, Ohio; Apparel; Jackets and Coats; 5 learners (75% of the applicable hourly minimum wage); October 24, 1940.

Lee Mfg. Company, 5902 St. Vincent Avenue, Shreveport, Louisiana; Apparel; Work Shirts and Pants; 5 learners (75% of the applicable hourly minimum wage); October 24, 1940.

The Shirtcraft Company, Inc., 951 West Second Street, Hazleton, Pennsylvania; Apparel; Shirts, Pajamas, Sportswear; 50 learners (75% of the applicable hourly minimum wage); October 24, 1940.

Smoler Brothers, Inc., 318 Colfax Street, South Bend, Indiana; Apparel; Dresses; 100 learners (75% of the applicable hourly minimum wage); October 24, 1940.

Union Manufacturing Co., 110 West 11th Street, Los Angeles, California; Apparel; Trousers & Coveralls; 5 percent (75% of the applicable hourly minimum wage); October 24, 1940.

Ruth Knitting Mills, 2006 Brooklyn Avenue, Los Angeles, California; Knitted Wear; Sweaters; 1 learner; October 24, 1940.

Frank Ix & Sons, Inc., New Holland, Pennsylvania; Textile; Silk and Rayon; 10 learners; October 24, 1940.

Signed at Washington, D. C., this 26th day of August 1940.

MERLE D. VINCENT,
Authorized Representative of the Administrator.

[F. R. Doc. 40-3573; Filed, August 26, 1940; 11:48 a. m.]

FEDERAL TRADE COMMISSION.

[Docket No. 4141]

IN THE MATTER OF DEAN LADD KIDDER, INDIVIDUALLY AND AS EXECUTRIX, ESTATE OF WILLIAM V. KIDDER, TRADING AS PYROIL COMPANY

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 21st day of August, A. D. 1940.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U.S.C.A., Section 41),

It is ordered, That Arthur F. Thomas, a Trial Examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

IT IS FURTHER ORDERED, That the taking of testimony in this proceeding begin on Tuesday, September 3, 1940, at ten o'clock in the forenoon of that day (central standard time) in the Hearing Room, Federal Building, La Crosse, Wisconsin.

Upon completion of testimony for the Federal Trade Commission, the Trial Examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The Trial Examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-3554; Filed, August 24, 1940; 11:13 a. m.]

[Docket No. 4133]

IN THE MATTER OF MANCHESTER SILVER COMPANY, A CORPORATION, AND FRANK S. TRUMBULL, FRANZ S. TIDERMAN AND EDWARD B. PALMER, INDIVIDUALLY AND AS OFFICES OF MANCHESTER SILVER COMPANY, A CORPORATION

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 22nd day of August, A. D. 1940.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U.S.C.A., Section 41),

It is ordered, That Lewis C. Russell, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Wednesday, September 4, 1940, at nine o'clock in the forenoon of that day (eastern standard time) in Court Room No. 308, in United States Court House and Post Office Building, Providence, Rhode Island.

Upon completion of testimony for the Federal Trade Commission, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The trial examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-3553; Filed, August 24, 1940; 11:13 a. m.]

[Docket No. 4257]

IN THE MATTER OF JACK HERZOG, MICHAEL HERZOG, GEORGE HERZOG, AND LOUIS HERZOG, INDIVIDUALLY AND TRADING AS JACK HERZOG AND COMPANY

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C. Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Jack Herzog, Michael Herzog, George Herzog and Louis Herzog are individuals trading under the name Jack Herzog and Company, with their principal office and place of business located at 337 7th Avenue, New York, N. Y. Said respondents are engaged in business as commission resident buyers of fur garments. In the course of their said business respondents act as agents for the purchase of fur garments for and in behalf of approximately 80 fur garment retailers and department stores located in the several states of the United States, such purchases aggregating an annual volume of $600,000 to $800,000.

The manner of operation of respondents' business consists in receiving from one of said fur garment retailers or department stores orders or requisitions to purchase fur garments upon general specifications as to size, style, quality and price. When such orders are received by respondents they call upon various fur garment manufacturers and place the order at the most advantageous price from the standpoint of the buyer. Generally the manufacturer ships the fur garments so purchased direct to the retailer-purchaser, although in some instances delivery is arrested to permit inspection of the garments by respondents at their place of business.

On such purchase orders respondents generally receive from sellers a commission of 5%. On occasions when retailers whom respondents have represented place orders directly with fur garment manufacturers, respondents seek to, and on occasions do, secure commissions from the sellers on such orders.

New York City is the center of the fur garment industry in the United States and fur garment retailers and department stores located in other states of the United States undergo expenditure of a certain proportion of their total sales volume to cover cost of purchasing fur garments from the New York City fur garment market. In the course and conduct of their business respondents represent fur garment retailers who are in competition with other fur garment retailers who undergo buying expense by maintaining buying offices, retain the services of fur garment buyers known as "fee" buyers, or send representatives to New York City to make fur garment purchases.

PAR. 2. In the course and conduct of their business, respondents place orders for fur garments with many manufacturers located in New York, New York, on behalf of retailers located in various states of the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York, New York, into and through various states of the United States to their respective customers.

PAR. 3. In the course of the purchasing transactions by the respondents, as set forth in Paragraph 1 hereof, said sellers have, since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondents commissions, the same being a certain percentage of the sales price agreed upon between each of the said sellers and the respondents on the orders for merchandise placed by the respondents for their principals; and said respondents, since June 19, 1936, have received and accepted and are receiving and accepting such commissions on purchases of merchandise by some 80 fur garment retailers and department stores who are the actual purchasers in such transactions and in whose behalf said respondents have been and are, in fact, acting.

PAR. 4. The foregoing acts and practices are in violation of Subsection (c) of Section 2 of the Clayton Act, as amended.

Wherefore, the premises considered, the Federal Trade Commission on this

22nd day of August, A. D., 1940, issues its complaint against said respondents.

NOTICE

Notice is hereby given you, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, individually and trading as Jack Herzog and Company, respondents herein, that the 27th day of September, A. D., 1940, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 22nd day of August, A. D., 1940.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-3570; Filed, August 26, 1940; 11:18 a. m.]

[Docket No. 4259]

IN THE MATTER OF CENTRAL BUYING SERVICE, INC., A CORPORATION

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated has, since June 19, 1936, violated and is now violating the provisions of sub-section (c) Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, c. 592, Section 1, 49 Stat. 1526 (15 U.S.C.A. 13 (c)), hereby issues its complaint:

PARAGRAPH 1. Central Buying Service, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 101 West 37th Street, New York, New York.

PAR. 2. Respondent is a resident commission buyer and since the date of its incorporation has been and is now engaged in the business of providing information, facilities and purchasing services to a number of individuals, partnerships and corporations in the purchase of commodities such as millinery. These individuals, partnerships and corporations operate retail stores or departments of retail stores or otherwise resell such goods. Their places of business are located in various states of the United States and the District of Columbia.

PAR. 3. For many years last past respondent has received and it is now receiving and accepting orders from buyers to purchase for their accounts certain requirements. Following instructions as to number, price, color, fabric and style contained in each order so received, or if the orders contain no such instructions, then exercising through its officers and employees its own judgment as to such details, respondent executes these said orders by transmitting the same to various manufacturers and purchasing for buyers' accounts the desired merchandise. The millinery or other goods so purchased is selected by respondent from displays made each day in its office by salesmen of various manufacturers or such merchandise is selected from displays made in the show-rooms of manufacturers. Occasionally buyers will personally visit the New York Market and will call at the office of respondent where they are offered the facilities and buying service of the said respondent. These buyers are advised as to the show-rooms maintained by manufacturers and are conducted to these show-rooms by an officer or employee of respondent who assists them in selecting and purchasing the desired merchandise.

All orders for the purchase of merchandise, whether such orders are placed by respondent upon orders received through the mail or from selections made by the buyer as above set forth, are made out on forms supplied and provided for that purpose by respondent and delivered to the manufacturers from whom merchandise is so purchased. The manufacturers ship the goods direct to the buyer for whose account such purchases were made, bill the buyer direct and receive payment direct from the buyer. Respondent makes no charge to and receives no compensation from its clients for the purchasing service rendered and facilities supplied as hereinabove set forth. Respondent at all times has been, and is now acting in fact for and in behalf of such clients.

PAR. 4. In the course and conduct of its business aforesaid, in the manner, method and form as aforesaid, respondent, acting in fact for and in behalf of buyers, caused and now causes the said manufacturers to ship, and the said manufacturers do ship, commodities so purchased from the state in which said commodity was located at the time of the purchase into and through various other states of the United States and the District of Columbia, directly to the purchasers thereof in the states of their respective location.

PAR. 5. In the course and conduct of its business, as aforesaid, and while acting in fact for and in behalf of buyers as aforesaid, respondent has, since June 19, 1936, received and accepted and is now receiving and accepting from some sellers a commission on all merchandise purchased from such manufacturers by respondent for and on behalf of buyers as aforesaid. The commission so received and accepted by respondent varies from 3% to 7% of the sales price of the goods so purchased.

PAR. 6. The receipt and acceptance by respondent of commissions from sellers on purchases made from such sellers by respondent, for the account of and while acting in fact for and in behalf of such buyers, in the manner and under the circumstances as hereinabove set forth, is in violation of sub-section (c) of Section 2 of the Act described in the preamble hereof.

Wherefore, the premises considered, the Federal Trade Commission, on the

22nd day of August, A. D. 1940, issues its complaint against said respondent.

NOTICE

Notice is hereby given you, Central Buying Service, Inc., a corporation, respondent herein, that the 27th day of September, A. D. 1940, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 22nd day of August, A. D. 1940.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-3571; Filed, August 26, 1940; 11:18 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 54-24]

IN THE MATTER OF STANDARD GAS AND ELECTRIC COMPANY, SAN DIEGO CONSOLIDATED GAS & ELECTRIC COMPANY

ORDER APPROVING PLAN AND PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 22nd day of August, A. D. 1940.

An application having been filed by Standard Gas and Electric Company pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935, and a declaration having been filed by San Diego Consolidated Gas & Electric Company pursuant to sections 6 and 7 of said Act, for approval by the Commission of a plan pursuant to which holders of notes and debentures of Standard Gas and Electric Company would be permitted under certain circumstances to exchange said notes and debentures for common stock of San Diego Consolidated Gas & Electric Company (as more particularly set forth in said application) after such common stock has been reclassified pursuant to the said declaration;

Public hearings having been held thereon after appropriate notice,[1] and the Commission, after duly considering the record, having made and filed its findings and report thereon;

It is ordered, That said Plan be and it hereby is approved as necessary to effectuate the provisions of section 11 (b) of the Act, and fair and equitable to the persons affected thereby provided, and subject to the following conditions:

(1) That the period of deposit will not be extended without the approval of this Commission;

(2) That when all expenses incurred in connection with the transactions concerned with the application shall be actually paid, the application shall file a detailed statement of such expenses showing the names of persons or entities to whom such payments were made, the amounts of such payments, the amounts charged and a detailed description of the services rendered for which such payments were made.

It is further ordered, That said declaration be and it hereby is permitted to become effective; and

It is further ordered, That said report be and it hereby is adopted as the report made by the Commission herein pursuant to section 11 (g) of said Act.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-3563; Filed, August 26, 1940; 11:08 a. m.]

[1] 5 F.R. 2720.

[File No. 70-108]

IN THE MATTER OF AMERICAN UTILITIES SERVICE CORPORATION

ORDER APPROVING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 22nd day of August, A. D. 1940.

American Utilities Service Corporation, a registered holding company, having filed an application pursuant to Rule U-12D-1, promulgated under the Public Utility Holding Company Act of 1935, for approval of a proposed sale of all the outstanding securities of Gas Utilities Company, consisting of 2,600 shares of $10 par value common stock and a 6% promissory income note in the principal amount of $90,000, due November 1, 1964, for $75,000, to one James V. Reynolds;

A public hearing having been held on such application after appropriate notice;[1] the Commission having considered the record in this matter and having made and filed its findings herein:

It is ordered, That such application be and the same hereby is approved, subject to the terms and conditions prescribed in Rule U-9 promulgated under said Act.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-3565; Filed, August 26, 1940; 11:09 a. m.]

[1] F.R. 2650.

[File No. 70-135]

IN THE MATTER OF COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY; DILLON, READ & CO.

ORDER TO SHOW CAUSE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 22nd day of August, A. D. 1940.

Columbus and Southern Ohio Electric Company, a subsidiary of Continental Gas & Electric Corporation, the United Light and Railways Company, and The United Light and Power Company, registered holding companies, having filed

an application pursuant to Rule U-8 and Section 6 (b) of the Public Utility Holding Company Act of 1935 for exemption of the issue and sale of $29,000,000 of First Mortgage Bonds, 3¼% Series, due 1970; it being stated in said application that said bonds are to be sold publicly through underwriters and that Dillon, Read & Co., a joint stock association engaged in the investment banking and securities underwriting business, is to receive from the applicant fees as principal underwriter and manager of the syndicate in connection with the sale and distribution of said bonds; a hearing date pursuant to such application not having been set by the Commission; and

It appearing to the Commission that Dillon, Read & Co. may stand in such relationship to Columbus and Southern Ohio Electric Company that there is liable to be or to have been an absence of arm's-length bargaining with respect to the transaction whereby Dillon, Read & Co. proposes to act as principal underwriter or syndicate manager in connection with the proposed sale of bonds or render services in other respects thereto; and

It further appearing to the Commission that it is necessary to determine whether the fee to be paid to Dillon, Read & Co. in connection with such services is or is not reasonable and whether such fee should or should not be paid;

It is ordered, Pursuant to Rule U-12F-2 of the General Rules and Regulations promulgated under the Public Utility Holding Company Act of 1935 that Columbus and Southern Ohio Electric Company and Dillon, Read & Co. and each of them show cause on the 30th day of August 1940, at ten o'clock in the forenoon of that day in Room 1102 of the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C., why the Commission should not find that Dillon, Read & Co. stands or stood in such relation to Columbus and Southern Ohio Electric Company that there is liable to be or to have been an absence of arm's-length bargaining with respect to the transaction whereby Dillon, Read & Co. proposed to act as principal underwriters or syndicate managers in connection with the sale of the aforedescribed bonds or render services in connection therewith; and

It is ordered, That William W. Swift be and he hereby is designated to preside at the hearing ordered herein. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Recording Secretary.

[F. R. Doc. 40-3567; Filed, August 26, 1940; 11:09 a. m.]

[File Nos. 31-416, 31-479]

IN THE MATTER OF ASSOCIATED UTILITIES CORPORATION GAS AND ELECTRIC ASSOCIATES

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 23rd day of August, A. D. 1940.

Associated Utilities Corporation, a subsidiary of Associated Gas and Electric Company system, has filed an application pursuant to section 2 (a) (7) of the Public Utility Holding Company Act of 1935, seeking an order declaring it not to be a holding company within the terms of said section of said Act. It appears from the application that applicant owns 1,250 shares or 10% of the common (voting) stock of Paul Smith's Electric Light & Power & Railroad Company, an electric public utility;

Gas and Electric Associates, a subsidiary of Associated Gas and Electric Company system, has filed an application pursuant to section 2 (a) (7) of the Public Utility Holding Company Act of 1935, seeking an order declaring it not to be a holding company within the terms of said section of said Act. It appears from the application that applicant owns 4,977.5 shares or 39.82% of the common (voting) stock of Paul Smith's Electric Light & Power & Railroad Company, an electric public utility;

It appearing that the above described applications are concerned with common questions of law and fact and that the interests of applicants and the public may best be served by a consolidated hearing on said applications;

It is ordered, That a hearing on such matters under the applicable provisions of said Act and the rules of the Commission thereunder be held on September 23, 1940, at 10 o'clock in the forenoon of that day at the Securities and Exchange Commission, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing room clerk in Room 1102 will advise as to the room where such hearing will be held.

It is further ordered, That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such applicants and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before September 15, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-3562; Filed, August 26, 1940; 11:08 a. m.]

[File Nos. 31-416, 31-479, 31-490]

IN THE MATTER OF ASSOCIATED UTILITIES CORPORATION GAS AND ELECTRIC ASSOCIATES, AND PAUL SMITH'S ELECTRIC LIGHT & POWER & RAILROAD COMPANY

ORDER FOR CONSOLIDATION OF HEARINGS FOR STATED PURPOSES

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 23rd day of August, A. D. 1940.

The Commission now having pending before it the following related matters:

(1) File Nos. 31-416, 31-479, applications of Associated Utilities Corporation and Gas and Electric Associates, pursuant to section 2 (a) (7) of the Public Utility Holding Company Act of 1935 to be declared not to be holding companies as defined in said Act;

(2) File No. 31-490, application of Paul Smith's Electric Light & Power & Railroad Company, pursuant to section 2 (a) (8) of said Act to be declared not to be a subsidiary company of certain specified companies;

It appearing that such proceedings involve common questions of law and fact and that evidence offered in respect to each matter may have a bearing on the other; that a substantial saving in time, effort, and expense will result if the hearings on said matters are consolidated so that they may be heard as one matter and so that the evidence adduced in each matter may stand as evidence in the other for all purposes;

It is ordered, That the matters referred to in (1) and (2) hereof, Commission File Nos. 31-416, 31-479 and File No. 31-490, be and they hereby are consolidated for the purpose of hearing thereon. The Commission reserves the right, if at any time it may appear conducive to an orderly and economic disposition of any of such matters, to order a separate hearing with respect to the same or any part thereof or to close the record with respect thereto and/or to take action thereon prior to closing the record on said other matter or matters.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-3560; Filed, August 26, 1940; 11:07 a. m.]

[File No. 31-490]

IN THE MATTER OF PAUL SMITH'S ELECTRIC LIGHT & POWER & RAILROAD COMPANY

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 23rd day of August, A. D. 1940.

Paul Smith's Electric Light & Power & Railroad Company, having filed an application pursuant to section 2 (a) (8) of the Public Utility Holding Company Act of 1935 seeking an order declaring it not to be a subsidiary of Associated Gas and Electric Company, Associated Gas and Electric Corporation, Associated Utilities Corporation, Gas and Electric Associates, Associated Real Properties, Inc., Shinn & Company and The Railway and Bus Associates, or any of them;

The application reveals that 49.82% of the common (voting) stock of the applicant is beneficially owned by Gas and Electric Associates and Associated Utilities Corporation;

The application represents that the affairs and business of the applicant are controlled by its officers and directors, all of whom, with one exception, are represented as having no connection with the Associated Gas and Electric Company system;

It is ordered, That a hearing on such matters under the applicable provisions of said Act and the rules of the Commission thereunder be held on September 23, 1940 at 10 o'clock in the forenoon of that day at the Securities and Exchange Commission, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing room clerk in Room 1102 will advise as to the room where such hearing will be held.

It is further ordered, That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearings from time to time.

Notice of such hearing is hereby given to such applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before September 15, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3561; Filed, August 26, 1940; 11:07 a. m.]

[File No. 46-205]

IN THE MATTER OF CENTRAL AND SOUTHWEST UTILITIES COMPANY AND AMERICAN PUBLIC SERVICE COMPANY

ORDER CONTINUING AND CHANGING PLACE OF HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 23rd day of August, A. D. 1940.

The Commission having heretofore on August 2, 1940, issued its Notice of and Order for Hearing in the above matter[1] ordering that a hearing under the applicable provisions of the Public Utility Holding Company Act of 1935 be held on September 3, 1940, at 10:00 o'clock in the forenoon of that day at the Securities and Exchange Commission Building, Washington, D. C.; and

Counsel for the applicants and declarants and counsel for the Commission having agreed that the date for commencing such hearing should be postponed until September 17, 1940; and

It appearing to the Commission that numerous holders of the securities of Central and Southwest Utilities Company and American Public Service Company live in or in the vicinity of Chicago, Illinois.

It is therefore ordered, That the Notice of and Order for Hearing heretofore issued in this matter is modified; and

It is ordered, That the hearing in this matter he held on September 17, 1940, at 10:00 o'clock in the forenoon of that day at the Chicago Regional Office of the Securities and Exchange Commission, Room 630 of the Bankers Building, 105 South Adams Street, Chicago, Illinois;

It is further ordered, That after commencement of such hearings the same may be continued by the trial examiner to such further date and at such other place as circumstances warrant.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3564; Filed, August 26, 1940; 11:08 a. m.]

[File No. 59-5]

IN THE MATTER OF THE MIDDLE WEST CORPORATION AND ITS SUBSIDIARY COMPANIES, RESPONDENTS

ORDER FOR FURTHER ADJOURNMENT OF HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 23rd day of August, A. D. 1940.

The Commission heretofore on August 12, 1940 having ordered that the hearing in this matter be adjourned until 10:00 A. M. on August 26, 1940; and

It appearing such adjournment only to August 26, 1940 was granted for the reason that one of respondent's counsel had recovered from a recent illness; and

The respondents now having requested a further adjournment of such hearing until 10:00 A. M. on September 3, 1940, giving as reason therefor that respondents' counsel is again ill;

It is therefore ordered, That the order granting adjournment on the 12th day of August is modified; and

It is ordered, That the hearing is adjourned until 10:00 A. M. on September 3, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3568; Filed, August 26, 1940; 11:09 a. m.]

[File No. 70-137]

IN THE MATTER OF SAN ANTONIO PUBLIC SERVICE COMPANY, MELLON SECURITIES CORPORATION

ORDER TO SHOW CAUSE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 23rd day of August, A. D. 1940

San Antonio Public Service Company, a subsidiary of American Light & Traction Company, United American Company, The United Light and Railways Company and The United Light and Power Company, registered holding companies, having filed a declaration pursuant to Rule U-8 and section 7 of the Public Utility Holding Company Act of 1935 for authorization to issue and sell $16,500,000 First Mortgage Bonds, 3½% Series, due 1970 and $1,890,000 of 2⅜% Notes, which are to be issued as evidence of bank loans for the purpose of refunding existing bank loans; it being stated in the declaration that said bonds are to be sold publicly through underwriters and that Mellon Securities Corporation, a corporation engaged in the investment banking and securities underwriting business, is to receive from the declarant fees as principal underwriter and manager of the syndicate in connection with the sale and distribution of said bonds; a hearing date pursuant to such declaration not having been set by the Commission; and

It appearing to the Commission that Mellon Securities Corporation may stand in such relationship to San Antonio Public Service Company that there is liable to be or to have been an absence of arm's-length bargaining with respect to the transaction whereby Mellon Securities Corporation proposes to act as principal underwriter and syndicate

[1] 5 F.R. 2761.

manager in connection with the proposed sale of bonds or render services in other respects thereto; and

It further appearing to the Commission that it is necessary to determine whether the fee to be paid to Mellon Securities Corporation in connection with such services is or is not reasonable and whether such fee should or should not be paid;

It is ordered, pursuant to Rule U-12F-2 of the General Rules and Regulations promulgated under the Public Utility Holding Company Act of 1935 that San Antonio Public Service Company and Mellon Securities Corporation and each of them show cause on the 30th day of August, 1940 at ten o'clock in the forenoon of that day in Room 1102 of the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C., why the Commission should not find that Mellon Securities Corporation stands or stood in such relation to San Antonio Public Service Company that there is liable to be or to have been an absence of arm's-length bargaining with respect to the transaction whereby Mellon Securities Corporation proposed to act as principal underwriters or syndicate managers in connection with the sale of the aforedescribed bonds or render services in connection therewith; and

It is ordered, That William W. Swift be and hereby is designated to preside at the hearing ordered herein. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Recording Secretary.

[F. R. Doc. 40-3566; Filed, August 26, 1940; 11:09 a. m.]

[File No. 70-134]

IN THE MATTER OF MONONGAHELA WEST PENN PUBLIC SERVICE COMPANY

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE PURSUANT TO RULE U-8

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 24th day of August, A. D. 1940.

The above-named party having filed a declaration pursuant to the Public Utility Holding Company Act of 1935, particularly section 12 (b) of the Act and Rule U-12B-1 thereunder, regarding a proposed capital contribution of not more than $35,000 by the declarant to The West Maryland Power Company, a wholly-owned subsidiary; and

Said declaration having been filed on August 6, 1940, and Notice of said filing having been duly given in the form and manner prescribed by Rule U-8 promulgated pursuant to said Act, and the Commission not having received a request for a hearing with respect to said application within the period specified in said Notice, or otherwise, and not having ordered a hearing thereon; and

The above-named party having requested that said declaration as filed become effective as promptly as possible after the date of filing; and

The Commission deeming it appropriate in the public interest and in the interest of investors and consumers to permit the said declaration pursuant to Rule U-12B-1, and finding with respect to said declaration under section 12 (b) of said Act that the requirements of said Act are satisfied, and being satisfied that the effective date of such declaration should be advanced;

It is hereby ordered, Pursuant to said Rule U-8 and the applicable provisions of said Act and subject to the terms and conditions prescribed in Rule U-9 that the aforesaid declaration be and hereby is permitted to become effective at 1:00 P. M., Eastern Standard Time, on August 24, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

Commissioners Healy and Henderson were absent at the time of, and did not participate in, the Commission action herein.

[F. R. Doc. 40-3559; Filed, August 26, 1940; 11:07 a. m.]

[File No. 70-143]

IN THE MATTER OF ALABAMA WATER SERVICE COMPANY

NOTICE REGARDING FILING SUBJECT TO RULE U-8

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 24th day of August, A. D. 1940.

Notice is hereby given that a declaration or application (or both), has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above named party or parties; and

Notice is further given that any interested person may, not later than September 11, 1940 at 4:30 P. M., E. S. T., or 1:00 P. M., E. S. T., if such date be a Saturday, request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such declaration or application, as filed or as amended, may become effective or may be granted, as provided in Rule U-8 of the Rules and Regulations promulgated pursuant to said Act. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C.

All interested persons are referred to said declaration or application, which is on file in the office of said Commission, for a statement of the transactions therein proposed, which are summarized below:

Alabama Water Service Company a subsidiary of Federal Water Service Corporation, a registered holding company, proposes to issue and sell $4,200,000 principal amount of First Mortgage Bonds, 3¾% Series, due 1965, to three insurance companies: viz., The Northwestern Mutual Life Insurance Company, John Hancock Mutual Life Insurance Company and Massachusetts Mutual Life Insurance Company, at a proposed price of 101 per cent of their principal amount plus accrued interest.

It is proposed by Alabama Water Service Company to apply the proceeds of said sale to the redemption at 102 per cent of their principal amount plus accrued interest of its First Mortgage 5% Gold Bonds, Series A, due January 1, 1957, in the principal amount of $4,200,000.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-3569; Filed, August 26, 1940; 11:10 a. m.]